PART IV State Government

In this Part...

CHAPTER 30 Governor

The Constitution of India envisages the same pattern of government in the states as that for the Centre, that is, a parliamentary system. Part VI of the Constitution deals with the government in the states.

Articles 153 to 167 in Part VI of the Constitution deal with the state executive. The state executive consists of the governor, the chief minister, the council of ministers and the advocate general of the state. Thus, there is no office of vice-governor (in the state) like that of Vice-President at the Centre.

The governor is the chief executive head of the state. But, like the President, he/she is a nominal executive head (titular or constitutional head). The governor also acts as an agent of the central government. Therefore, the office of governor has a dual role.

Usually, there is a governor for each state, but the 7th Constitutional Amendment Act of 1956 facilitated the appointment of the same person as a governor for two or more states.

APPOINTMENT OF GOVERNOR

The governor is neither directly elected by the people nor indirectly elected by a specially constituted electoral college as is the case with the President. He/she is appointed by the President by warrant under his/her hand and seal. In a way, he/she is a nominee of the Central government. But, as held by the Supreme Court in *Hargovind Pant* case[1] (1979), the office of governor of a state is not an employment under the Central government. It is an independent constitutional office and is not under the control of or subordinate to the Central government.

The Draft Constitution provided for the direct election of the governor on the basis of universal adult suffrage. But the Constituent Assembly opted for the present system of appointment of governor by the President because of the following reasons[1a]:

1. The direct election of the governor is incompatible with the parliamentary system established in the states.
2. The mode of direct election is more likely to create conflicts between the governor and the chief minister.
3. The governor being only a constitutional (nominal) head, there is no point in making elaborate arrangements for his/her election and spending huge amount of money.

[1] *Hargovind Pant* vs. *Raghukul Tilak* (1979).
[1a] *Constituent Assembly Debates*, Volume IV, pp. 588–607.

4. The election of a governor would be entirely on personal issues. Hence, it is not in the national interest to involve a large number of voters in such an election.
5. An elected governor would naturally belong to a party and would not be a neutral person and an impartial head.
6. The election of governor would create separatist tendencies and thus affect the political stability and unity of the country.
7. The system of Presidential nomination enables the Centre to maintain its control over the states.
8. The direct election of the governor creates a serious problem of leadership at the time of a general election in the state.
9. The chief minister would like his/her nominee to contest for governorship. Hence, a second rate man of the ruling party is elected as governor.

Therefore, the American model, where the Governor of a state is directly elected, was dropped and the Canadian model, where the governor of a province (state) is appointed by the Governor-General (Centre), was accepted in the Constituent Assembly.

QUALIFICATIONS, OATH AND CONDITIONS

Qualifications

The Constitution lays down only two qualifications for the appointment of a person as a governor. These are:

1. He/she should be a citizen of India.
2. He/she should have completed the age of 35 years.

The Sarkaria Commission on Centre-State Relations (1983–88) made the following recommendations with regard to the selection and appointment of a governor:

1. A person to be appointed as a Governor should satisfy the following criteria:
   (i) He/she should be eminent in some walk of life.
   (ii) He/she should be a person from outside the state.
   (iii) He/she should be a detached figure and not too intimately connected with the local politics of the state.
   (iv) He/she should be a person who has not taken too great a part in politics generally, and particularly in the recent past.
2. It is desirable that a politician from the ruling party at the Centre is not appointed as Governor of a state which is being run by some other party or a combination of other parties.
3. In order to ensure effective consultation with the state chief minister in the selection of a person to be appointed as Governor, the procedure of consultation should be prescribed in the constitution itself by suitably amending Article 155.
4. The vice-President of India and the speaker of the Lok Sabha may be consulted by the Prime Minister in selecting a Governor. This consultation should be confidential and informal and should not be a matter of constitutional obligation.

Oath or Affirmation

Before entering upon his/her office, the governor has to make and subscribe to an oath or affirmation. In his/her oath, the governor swears:

(a) to faithfully execute the office;
(b) to preserve, protect and defend the Constitution and the law; and
(c) to devote himself/herself to the service and well-being of the people of the state.

The oath of office to the governor is administered by the chief justice of the concerned state high court and in his/her absence, the senior-most judge of that court available.

Every person discharging the functions of the governor also undertakes the similar oath or affirmation.

Conditions of Office

The Constitution lays down the following conditions for the the governor's office:

1. He/she should not be a member of either House of Parliament or a House of the

state legislature. If any such person is appointed as governor, he/she is deemed to have vacated his/her seat in that House on the date on which he/she enters upon his/her office as the governor.

2. He/she should not hold any other office of profit.
3. He/she is entitled without payment of rent to the use of his/her official residence (the *Raj Bhavan*).
4. He/she is entitled to such emoluments, allowances and privileges as may be determined by Parliament.
5. When the same person is appointed as the governor of two or more states, the emoluments and allowances payable to him/her are shared by the states in such proportion as determined by the President.
6. His/her emoluments and allowances cannot be diminished during his/her term of office.

In 2018, the Parliament has increased the salary of the governor from ₹1.10 lakh to ₹3.50 lakh per month.[2]

Like the President, the governor is also entitled to a number of privileges and immunities. He/she enjoys personal immunity from legal liability for his/her official acts. During his/her term of office, he/she is immune from any criminal proceedings, even in respect of his/her personal acts. He/she cannot be arrested or imprisoned. However, after giving two months' notice, civil proceedings can be instituted against him/her during his/her term of office in respect of his/her personal acts.

TERM OF GOVERNOR'S OFFICE

A governor holds office for a term of five years from the date on which he/she enters upon his/her office. However, this term of five years is subject to the pleasure of the President. Further, he/she can resign at any time by addressing a resignation letter to the President.

In the *Surya Narain* case[3] (1981), the Supreme Court held that the pleasure of the President is not justifiable. The governor has no security of tenure and no fixed term of office. He/she may be removed by the President at any time.

The Constitution does not lay down any grounds upon which a governor may be removed by the President. Hence, the National Front Government headed by V.P. Singh (1989) asked all the governors to resign as they were appointed by the Congress government. Eventually, some of the governors were replaced and some were allowed to continue. The same thing was repeated in 1991, when the Congress Government headed by P.V. Narasimha Rao changed fourteen governors appointed by the V.P. Singh and Chandra Sekhar governments.

The President may transfer a Governor appointed to one state to another state for the rest of the term. Further, a Governor whose term has expired may be reappointed in the same state or any other state.

A governor can hold office beyond his/her term of five years until his/her successor assumes charge. The underlying idea is that there must be a governor in the state and there cannot be an interregnum.

The President can make such provision as he/she thinks fit for the discharge of the functions of the governor in any contingency not provided for in the Constitution, for example, the death of a sitting governor. Thus, the chief justice of the concerned state high court may be appointed temporarily to discharge the functions of the governor of that state.

POWERS AND FUNCTIONS OF GOVERNOR

A governor possesses executive, legislative, financial and judicial powers more or less analogous to the President of India. However, he/she has no diplomatic, military or emergency powers like the President.

[2]Vide the Finance Act, 2018, with effect from 1st January, 2016. This Act amended the Governor's (Emoluments, Allowances and Privileges) Act, 1982.

[3]*Surya Narain* vs. *Union of India* (1981).

The powers and functions of the governor can be studied under the following heads:

1. Executive powers.
2. Legislative powers.
3. Financial powers.
4. Judicial powers.

Executive Powers

The executive powers and functions of the Governor are:

1. All executive actions of the government of a state are formally taken in his/her name.
2. He/she can make rules specifying the manner in which the Orders and other instruments made and executed in his/her name shall be authenticated.
3. He/she can make rules for more convenient transaction of the business of a state government and for the allocation among the ministers of the said business.
4. He/she appoints the chief minister and other ministers. They also hold office during his/her pleasure. There should be a Tribal Welfare minister in the states of Chattisgarh, Jharkhand, Madhya Pradesh and Odisha appointed by him/her. The state of Bihar was excluded from this provision by the 94th Amendment Act of 2006.
5. He/she appoints the advocate general of a state and determines his/her remuneration. The advocate general holds office during the pleasure of the governor.
6. He/she appoints the state election commissioner and determines his/her conditions of service and tenure of office. However, the state election commissioner can be removed only in like manner and on the like grounds as a judge of a high court.
7. He/she appoints the chairman and members of the state public service commission. However, they can be removed only by the President and not by a governor.
8. He/she can seek any information relating to the administration of the affairs of the state and proposals for legislation from the chief minister.
9. He/she can require the chief minister to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.
10. He/she can recommend the imposition of constitutional emergency in a state to the President. During the period of President's rule in a state, the governor enjoys extensive executive powers as an agent of the President.
11. He/she acts as the chancellor of universities in the state. He/she also appoints the vice-chancellors of universities in the state.

Legislative Powers

A governor is an integral part of the state legislature. In that capacity, he/she has the following legislative powers and functions:

1. He/she can summon or prorogue the state legislature and dissolve the state legislative assembly.
2. He/she can address the state legislature at the commencement of the first session after each general election and the first session of each year.
3. He/she can send messages to the house or houses of the state legislature, with respect to a bill pending in the legislature or otherwise.
4. He/she can appoint any member of the State legislative assembly to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant. Similarly, he/she can appoint any member of the state legislature council to preside over its proceedings when the offices of both Chairman and Deputy Chairman fall vacant.
5. He/she nominates one-sixth of the members of the state legislative council from amongst persons having special knowledge or practical experience in literature, science, art, cooperative movement and social service.
6. He/she nominated (before 2020) one member to the State Legislative Assembly from

the Anglo-Indian community. However, the 104th Constitutional Amendment Act of 2019 has discontinued this provision.

7. He/she decides on the question of disqualification of members of the state legislature in consultation with the Election Commission.
8. When a bill is sent to the governor after it is passed by state legislature, he/she can:
   (a) Give his/her assent to the bill, or
   (b) Withhold his/her assent to the bill, or
   (c) Return the bill (if it is not a money bill) for reconsideration of the state legislature. However, if the bill is passed again by the state legislature with or without amendments, the governor has to give his/her assent to the bill, or
   (d) Reserve the bill for the consideration of the President. In one case such reservation is obligatory, that is, where the bill passed by the state legislature endangers the position of the state high court. In addition, as identified by Soli Sorabji, the former Attorney-General of India, the governor can also reserve the bill if it is of the following nature:[4]
      (i) *Ultra-vires,* that is, against the provisions of the Constitution.
      (ii) Opposed to the Directive Principles of State Policy.
      (iii) Against the larger interest of the country.
      (iv) Of grave national importance.
      (v) Dealing with compulsory acquisition of property under Article 31A of the Constitution.
9. He/she can promulgate ordinances when the state legislature is not in session. These ordinances must be approved by the state legislature within six weeks from its reassembly. He/she can also withdraw an ordinance anytime. This is the most important legislative power of the governor.

   The Supreme Court's judgement relating to the ordinance-making power of the Governor in the *D.C. Wadhwa* case[4a] (1986) is worth mentioning here. In that case, the court pointed out that between 1967–1981, the Governor of Bihar promulgated 256 ordinances and all these were kept in force for periods ranging from one to fourteen years by repromulgation from time to time. The court ruled that successive repromulgation of ordinances with the same text without any attempt to get the bills passed by the Assembly would amount to violation of the constitution and the ordinance so repromulgated is liable to be struck down. It held that the exceptional power of law-making through ordinance cannot be used as a substitute for the legislative power of the state legislature.
10. He/she lays the reports of the State Finance Commission, the State Public Service Commission and the Comptroller and Auditor-General relating to the accounts of the state, before the state legislature.

Financial Powers

The financial powers and functions of the governor are:

1. He/she sees that the Annual Financial Statement (state budget) is laid before the state legislature.
2. Money bills can be introduced in the state legislature only with his/her prior recommendation.
3. No demand for a grant can be made except on his/her recommendation.
4. He/she can make advances out of the Contingency Fund of the state to meet any unforeseen expenditure.
5. He/she constitutes a finance commission after every five years to review the financial position of the panchayats and the municipalities.

[4] Soli Sorabji, *The Governor: Sage or Saboteur,* Roli Books (New Delhi), 1985, p. 25.

[4a] *D.C. Wadhwa* vs. *State of Bihar* (1986).

Judicial Powers

The judicial powers and functions of the governor are:

1. He/she can grant pardons, reprieves, respites and remissions of punishment or suspend, remit and commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extends.
2. He/she is consulted by the President while appointing the judges of the concerned state high court.
3. He/she makes appointments, postings and promotions of the district judges in consultation with the state high court.
4. He/she also appoints persons to the judicial service of the state (other than district judges) in consultation with the state high court and the State Public Service Commission.

Now, we will study in detail the three important powers of the governor (veto power, ordinance-making power and pardoning power) by comparing them with that of the President in Tables 30.1, 30.2 and 30.3 respectively.

Table 30.1 Comparing Veto Powers of President and Governor

President	Governor
With Regard to Ordinary Bills	**With Regard to Ordinary Bills**
Every ordinary bill, after it is passed by both the Houses of the Parliament either singly or at a joint sitting, is presented to the President for his/her assent. He/she has three alternatives: 1. He/she may give his/her assent to the bill, the bill then becomes an act. 2. He/she may withhold his/her assent to the bill, the bill then ends and does not become an act. 3. He/she may return the bill for reconsideration of the Houses. If the bill is passed by both the Houses again with or without amendments and presented to the President for his/her assent, the President must give his/her assent to the bill. Thus the President enjoys only a 'suspensive veto'.	Every ordinary bill, after it is passed by the legislative assembly in case of a unicameral legislature or by both the Houses in case of a bicameral legislature either in the first instance or in the second instance, is presented to the governor for his/her assent. He/she has four alternatives: 1. He/she may give his/her assent to the bill, the bill then becomes an act. 2. He/she may withhold his/her assent to the bill, the bill then ends and does not become an act. 3. He/she may return the bill for reconsideration of the House or Houses. If the bill is passed by the House or Houses again with or without amendments and presented to the governor for his/her assent, the governor must give his/her assent to the bill. Thus, the governor enjoys only a 'suspensive veto'. 4. He/she may reserve the bill for the consideration of the President.
When a state bill is reserved by the governor for the consideration of the President, the President has three alternatives: (a) He/she may give his/her assent to the bill, the bill then becomes an act. (b) He/she may withhold his/her assent to the bill, the bill then ends and does not become an Act. (c) He/she may return the bill for reconsideration of the House or Houses of the state legislature. When a bill is so returned, the House or Houses have to reconsider it within six months. If the bill is passed by the House or Houses again with or without amendments and presented to the President for his/her assent, the President is not bound to give his/her assent to the bill. He/she may give his/her assent to such a bill or withhold his/her assent.	When the governor reserves a bill for the consideration of the President, he/she will not have any further role in the enactment of the bill. If the bill is returned by the President for the reconsideration of the House or Houses and is passed again, the bill must be presented again for the Presidential assent only. If the President gives his/her assent to the bill, it becomes an act. This means that the assent of the Governor is no longer required.

President	Governor
With Regard to Money Bills	**With Regard to Money Bills**
Every money bill after it is passed by the Parliament, is presented to the President for his/her assent. He/she has two alternatives: 1. He/she may give his/her assent to the bill, the bill then becomes an act. 2. He/she may withhold his/her assent to the bill, the bill then ends and does not become an act. Thus, the President cannot return a money bill for the reconsideration of the Parliament. Normally, the President gives his/her assent to a money bill as it is introduced in the Parliament with his/her previous permission.	Every money bill, after it is passed by the state legislature (unicameral or bicameral), is presented to the governor for his/her assent. He/she has three alternatives: 1. He/she may give his/her assent to the bill, the bill then becomes an act. 2. He/she may withhold his/her assent to the bill, the bill then ends and does not become an act. 3. He/she may reserve the bill for the consideration of the President. Thus, the governor cannot return a money bill for the reconsideration of the state legislature. Normally, the governor gives his/her assent to a money bill as it is introduced in the state legislature with his/her previous permission.
When a Money Bill is reserved by the Governor for the consideration of the President, the President has two alternatives: (a) He/she may give his/her assent to the bill, the bill then becomes an Act. (b) He/she may withhold his/her assent to the bill, the bill then ends and does not become an act. Thus, the President cannot return a money bill for the reconsideration of the state legislature (as in the case of the Parliament).	When the governor reserves a money bill for the consideration of the President, he/she will not have any further role in the enactment of the bill. If the President gives his/her assent to the bill, it becomes an Act. This means that the assent of the governor is no longer required.

Table 30.2 Comparing Ordinance-Making Powers of President and Governor

President	Governor
1. He/she can promulgate an ordinance only when both the Houses of Parliament are not in session or when either of the two Houses of Parliament is not in session. The second provision implies that an ordinance can also be promulgated by the President when only one House is in session because a law can be passed by both the Houses and not by one House alone.	1. He/she can promulgate an ordinance only when the legislative assembly (in case of a unicameral legislature) is not in session or (in case of a bi-cameral legislature) when both the Houses of the state legislature are not in session or when either of the two Houses of the state legislature is not in session. The last provision implies that an ordinance can be promulgated by the governor when only one House (in case of a bicameral legislature) is in session because a law can be passed by both the Houses and not by one House alone.
2. He/she can promulgate an ordinance only when he/she is satisfied that circumstances exist which render it necessary for him/her to take immediate action.	2. He/she can promulgate an ordinance only when he/she is satisfied that circumstances exist which render it necessary for him/her to take immediate action.
3. His/her ordinance-making power is co-extensive with the legislative power of the Parliament. This means that he/she can issue ordinances only on those subjects on which the Parliament can make laws.	3. His/her ordinance-making power is co-extensive with the legislative power of the state legislature. This means that he/she can issue ordinances only on those subjects on which the state legislature can make laws.
4. An ordinance issued by him/her has the same force and effect as an act of the Parliament.	4. An ordinance issued by him/her has the same force and effect as an act of the state legislature.

(Contd.)

President	Governor
5. An ordinance issued by him/her is subject to the same limitations as an act of Parliament. This means that an ordinance issued by him/her will be invalid to the extent it makes any provision which the Parliament cannot make.	5. An ordinance issued by him/her is subject to the same limitations as an act of the state legislature. This means that an ordinance issued by him/her will be invalid to the extent it makes any provision which the state legislature cannot make.
6. He/she can withdraw an ordinance at any time.	6. He/she can withdraw an ordinance at any time.
7. His/her ordinance-making power is not a discretionary power. This means that he/she can promulgate or withdraw an ordinance only on the advice of the council of ministers headed by the prime minister.	7. His/her ordinance-making power is not a discretionary power. This means that he/she can promulgate or withdraw an ordinance only on the advice of the council of ministers headed by the chief minister.
8. An ordinance issued by him/her should be laid before both the Houses of Parliament when it reassembles.	8. An ordinance issued by him/her should be laid before the legislative assembly or both the Houses of the state legislature (in case of a bicameral legislature) when it reassembles.
9. An ordinance issued by him/her ceases to operate on the expiry of six weeks from the reassembly of Parliament. It may cease to operate even earlier than the prescribed six weeks, if both the Houses of Parliament passes resolutions disapproving it.	9. An ordinance issued by him/her ceases to operate on the expiry of six weeks from the reassembly of the state legislature. It may cease to operate even earlier than the prescribed six weeks, if a resolution disapproving it is passed by the legislative assembly and is agreed to by the legislative council (in case of a bicameral legislature).
10. He/she needs no instruction for making an ordinance.	10. He/she cannot make an ordinance without the instructions from the President in three cases: (a) If a bill containing the same provisions would have required the previous sanction of the President for its introduction into the state legislature. (b) If he/she would have deemed it necessary to reserve a bill containing the same provisions for the consideration of the President. (c) If an act of the state legislature containing the same provisions would have been invalid without receiving the President's assent.

Table 30.3 Comparing Pardoning Powers of President and Governor

President	Governor
1. He/she can pardon, reprieve, respite, remit, suspend or commute the punishment or sentence of any person convicted of any offence against a Central law.	1. He/she can pardon, reprieve, respite, remit, suspend or commute the punishment or sentence of any person convicted of any offence against a state law.
2. He/she can pardon, reprieve, respite, remit, suspend or commute a death sentence. He/she is the only authority to pardon a death sentence.	2. He/she cannot pardon a death sentence. Even if a state law prescribes for death sentence, the power to grant pardon lies with the President and not the governor. But, the governor can suspend, remit or commute a death sentence.
3. He/she can grant pardon, reprieve, respite, suspension, remission or commutation in respect to punishment or sentence by a court-martial (military court).	3. He/she does not possess any such power.

CONSTITUTIONAL POSITION OF GOVERNOR

The Constitution of India provides for a parliamentary form of government in the states as in the Centre. Consequently, the governor has been made only a nominal executive, the real executive constitutes the council of ministers headed by the chief minister. In other words, the governor has to exercise his/her powers and functions with the aid and advise of the council of ministers headed by the chief minister, except in matters in which he/she is required to act in his/her discretion (i.e., without the advice of ministers).

In estimating the constitutional position of the governor, particular reference has to be made to the provisions of Articles 154, 163 and 164. These are:

(a) The executive power of the state shall be vested in the governor and shall be exercised by him/her either directly or through officers subordinate to him/her in accordance with this Constitution (Article 154).

(b) There shall be a council of ministers with the chief minister as the head to aid and advise the governor in the exercise of his/her functions, except in so far as he/she is required to exercise his/her functions in his/her discretion (Article 163).

(c) The council of ministers shall be collectively responsible to the legislative assembly of the state (Article 164). This provision is the foundation of the parliamentary system of government in the state.

From the above, it is clear that constitutional position of the governor differs from that of the President in the following two respects:[5]

1. While the Constitution envisages the possibility of the governor acting at times in his/her discretion, no such possibility has been envisaged for the President.
2. After the 42nd Constitutional Amendment (1976), ministerial advice has been made binding on the President, but no such provision has been made with respect to the governor.

The Constitution makes it clear that if any question arises whether a matter falls within the governor's discretion or not, the decision of the governor is final and the validity of anything done by him/her cannot be called in question on the ground that he/she ought or ought not to have acted in his/her discretion. The governor has constitutional discretion in the following cases:

1. Reservation of a bill for the consideration of the President.
2. Recommendation for the imposition of the President's Rule in the state.
3. While exercising his/her functions as the administrator of an adjoining union territory (in case of additional charge).
4. Determining the amount payable by the Government of Assam, Meghalaya, Tripura and Mizoram to an autonomous Tribal District Council as royalty accruing from licenses for mineral exploration[6].

In addition to the above constitutional discretion (i.e., the express discretion mentioned in the Constitution), the governor, like the President, also has situational discretion (i.e., the hidden discretion derived from the exigencies of a prevailing political situation) in the following cases:

1. Appointment of chief minister when no party has a clear-cut majority in the state legislative assembly or when the chief minister in office dies suddenly and there is no obvious successor.

[5]M.P. Jain, *Indian Constitutional Law*, Wadhwa, Fourth Ed, p. 186.

[6]Paragraph 9(2) of the Sixth Schedule says: 'If any dispute arises as to the share of such royalties to be made over to a district council, it shall be referred to the governor for determination and the amount determined by the governor in his/her discretion shall be deemed to be the amount payable to the district council and the decision of the governor shall be final'. The Sixth Schedule contains the provisions as to the administration of tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram.

2. Dismissal of the council of ministers when it cannot prove the confidence of the state legislative assembly.
3. Dissolution of the state legislative assembly if the council of ministers has lost its majority.

Moreover, the governor has certain special responsibilities to discharge according to the directions issued by the President. In this regard, the governor, though has to consult the council of ministers led by the chief minister, acts finally in his/her discretion. They are as follows:

1. Maharashtra—Establishment of separate development boards for Vidarbha and Marathwada.
2. Gujarat—Establishment of separate development boards for Saurashtra and Kutch.
3. Nagaland—With respect to law and order in the state for so long as the internal disturbance in the Naga Hills-Tuensang Area continues.
4. Assam—With respect to the administration of tribal areas.
5. Manipur—Regarding the administration of the hill areas in the state.
6. Sikkim—For peace and for ensuring social and economic advancement of the different sections of the population.
7. Arunachal Pradesh—With respect to law and order in the state.
8. Karnataka—Establishment of a separate development board for Hyderabad-Karnataka region[7].

Thus, the Constitution has assigned a dual role to the office of a governor in the Indian federal system. He/she is the constitutional head of the state as well as the representative of the Centre (i.e., President).

ISSUES IN THE GOVERNOR'S FUNCTIONING

The Sarkaria Commission on Centre-State Relations (1983–88) identified various issues in the functioning of the Governor. These issues are continuing and relevant even today. The Commission has explained them in the following way:

1. **In Choosing Chief Minister:** Soon after an election when a single party or a coalition emerges as the largest single party or group, there is no difficulty in the selection and appointment of a Chief Minister. However, where no single party or group command absolute majority, the Governor has to exercise his discretion in the selection of Chief Minister. In such a situation, the leader of the party or group which, in so far as the Governor is able to ascertain, has the largest support in the Legislative Assembly, may be called upon to form the Government, leaving it to the Assembly to determine the question of confidence. This procedure leaves little scope for any allegation of unfairness or partisanship on the part of the Governor in the use of his discretion. Such a situation may also arise when a Ministry resigns after being defeated in the Assembly or because it finds itself in a minority.
2. **In Testing Majority:** The Governors have employed various ways to determine which party or group is likely to command a majority in the Legislative Assembly. Some have relied only on lists of supporters of rival claimants produced before them. In other cases, physical verification by counting heads was carried out.
3. **In Dismissal of Chief Minister:** There has been no uniformity in regard to the criteria adopted for dismissal of a Chief Minister. Obviously, a Chief Minister cannot continue in office after he ceases to command a majority in the Legislative Assembly. It is normal for a Chief Minister to resign immediately or face the Legislative Assembly to prove that he continues to enjoy majority support.
4. **In Dissolving the Legislative Assembly:** Various Governors have adopted different approaches in similar situations in regard

[7]This provision was added by the 98th Constitutional Amendment Act of 2012.

to dissolution of the Legislative Assembly. The advice of a Chief Minister, enjoying majority support in the Assembly, is normally binding on the Governor. However, where the Chief Minister had lost such support, some Governors refused to dissolve the Legislative Assembly on his advice, while others in similar situations, accepted his advice, and dissolved the Assembly.

5. **In Recommending President's Rule:** In a number of situations of political instability in the States, the Governors recommended President's rule under Article 356 without exhausting all possible steps under the Constitution to induct or maintain a stable government. The Governors concerned neither gave a fair chance to contending parties to form a Ministry, nor allowed a fresh appeal to the electorate after dissolving the Legislative Assembly. Almost all these cases have been criticised on the ground that the Governors, while making their recommendations to the President, behaved in a partisan manner. Further, there has been no uniformity of approach in such situations.
6. **In Reserving Bills for President's Consideration:** The Governors' reservation of State Bills passed by the Legislature for the consideration of the President have created a controversy in some cases.
7. **Regarding Nominations to Legislative Council:** The use of discretion by Governors in the nomination of members to the Legislative Council has been criticised. These actions have been criticised on the ground that the Governors have no discretion in such matters.
8. **Regarding Exercise of Discretion as Chancellor of University:** The use of discretion by Governor, in nominating members of a University Council or University functionary, in his capacity as Chancellor of a University in the State, has also come in for criticism. In several State Universities, the concerned legislations specifically provide that the Governor by virtue of his office shall be Chancellor or head of the University and by these legislations certain powers have been conferred on the Chancellor. The Governors have exercised their powers as Chancellor under the statute and not as Governor. These actions of the Governors have again been questioned on the premise that they have to abide by the advice of the Council of Ministers even in such cases.

Table 30.4 Articles Related to Governor at a Glance

Article No.	Subject-matter
153.	Governors of states
154.	Executive power of state
155.	Appointment of Governor
156.	Term of office of Governor
157.	Qualifications for appointment as Governor
158.	Conditions of Governor's office
159.	Oath or affirmation by the Governor
160.	Discharge of the functions of the Governor in certain contingencies
161.	Power of the Governor to grant pardons and others
162.	Extent of executive power of state

(Contd.)

Article No.	Subject-matter
163.	Council of ministers to aid and advise the Governor
164.	Other provisions as to ministers like appointments, term, salaries, and others
165.	Advocate-General for the state
166.	Conduct of business of the government of a state
167.	Duties of the Chief Minister regarding furnishing of information to the Governor, and so on
174.	Sessions of the state legislature, prorogation and dissolution
175.	Right of the Governor to address and send messages to the house or houses of state legislature
176.	Special address by the Governor
200.	Assent to bills (i.e. assent of the Governor to the bills passed by the state legislature)
201.	Bills reserved by the Governor for consideration of the President
213.	Power of Governor to promulgate ordinances
217.	Governor being consulted by the President in the matter of the appointments of the judges of the High Courts
233.	Appointment of district judges by the Governor
234.	Appointments of persons (other than district judges) to the judicial service of the state by the Governor.

CHAPTER 31 Chief Minister

In the scheme of parliamentary system of government provided by the Constitution, the governor is the nominal executive authority (*de jure* executive) and the Chief Minister is the real executive authority (*de facto* executive). In other words, the governor is the head of the state while the Chief Minister is the head of the government. Thus the position of the Chief Minister at the state level is analogous to the position of prime minister at the Centre.

APPOINTMENT OF CHIEF MINISTER

The Constitution does not contain any specific procedure for the selection and appointment of the Chief Minister. Article 164 only says that the Chief Minister shall be appointed by the governor. However, this does not imply that the governor is free to appoint any one as the Chief Minister. In accordance with the conventions of the parliamentary system of government, the governor has to appoint the leader of the majority party in the state legislative assembly as the Chief Minister. But, when no party has a clear majority in the assembly, then the governor may exercise his/her personal discretion in the selection and appointment of the Chief Minister. In such a situation, the governor usually appoints the leader of the largest party or coalition in the assembly as the Chief Minister and ask him/her to seek a vote of confidence in the House within a month.

The governor may have to exercise his/her individual judgement in the selection and appointed of the Chief Minister when the Chief Minister in office dies suddenly and there is no obvious successor. However, on the death of a Chief Minister, the ruling party usually elects a new leader and the governor has no choice but to appoint him/her as Chief Minister.

The Constitution does not require that a person must prove his/her majority in the legislative assembly before he/she is appointed as the Chief Minister. The governor may first appoint him/her as the Chief Minister and then ask him/her to prove his/her majority in the legislative assembly within a reasonable period.

A person who is not a member of the state legislature can be appointed as Chief Minister for six months, within which time, he/she should be elected to the state legislature, failing which he/she ceases to be the Chief Minister.

Further, the Chief Minister may be a member of any of the two Houses of a state legislature. Usually Chief Ministers have been selected from the Lower House (legislative assembly), but, on a number of occasions, a member of the Upper House (legislative council) has also been appointed as Chief Minister.

The Sarkaria Commission on Centre-State Relations (1983–88) made the following recommendations with regard to the selection and appointment of a chief minister:

1. In choosing a chief minister, the Governor should be guided by the following principles:
   (i) The party or combination of parties which commands the widest support in the Legislative Assembly should be called upon to form the government.

(ii) The Governor's task is to be see that a government is formed and not to try to form a government which will pursue policies which he/she approves.

2. If there is a single party having an absolute majority in the Legislative Assembly, the leader of that party should automatically be asked to become the chief minister. However, if there is no such party, the Governor should select a chief minister from among the following parties or groups of parties by sounding them, in turn, in the order of preference indicated below:
   (i) An alliance of parties that was formed prior to the elections.
   (ii) The largest single party staking a claim to form the government with the support of others, including independents.
   (iii) A post-electoral coalition of parties, with all the partners in the coalition joining the government.
   (iv) A post-electoral alliance of parties, with some of the parties in the alliance forming a government and the remaining parties, including independents, supporting the government from outside.

   The Governor while going through the process described above should select a leader who in his/her (Governor's) judgement is most likely to command a majority in the Legislative Assembly.
3. A chief minister, unless he/she is the leader of a party, which has absolute majority in the Legislative Assembly, should seek a vote of confidence in the Legislative Assembly within 30 days of taking over.
4. When a number of members of the Legislative Assembly approach the Governor and contest the claim of the incumbent chief minister to continued majority support in the Legislative Assembly, the Governor should not risk a determination of this issue of majority support, on his/her own, outside the Legislative Assembly. The prudent course for him/her would be to cause the rival claims to be tested on the floor of the House.

OATH, TERM AND SALARY

Before the Chief Minister enters his/her office, the governor administers to him/her the oaths of office and secrecy.[1] In his/her oath of office, the Chief Minister swears:

1. to bear true faith and allegiance to the Constitution of India,
2. to uphold the sovereignty and integrity of India,
3. to faithfully and conscientiously discharge the duties of his/her office, and
4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will.

In his/her oath of secrecy, the Chief Minister swears that he/she will not directly or indirectly communicate or reveal to any person(s) any matter that is brought under his/her consideration or becomes known to him/her as a state minister except as may be required for the due discharge of his/her duties as such minister.

The term of the Chief Minister is not fixed and he/she holds office during the pleasure of the governor. However, this does not mean that the governor can dismiss him/her at any time. He/she cannot be dismissed by the governor as long as he/she enjoys the majority support in the legislative assembly.[2] But, if he/she loses the confidence of the assembly, he/she must resign or the governor can dismiss him/her.

[1]The form of oath of office and secrecy for the Chief Minister is similar to that for any state minister.

[2]This was ruled by the Supreme Court in *S.R. Bommai* vs. *Union of India* (1994). However, there have been many violations of this rule, whereby the governors have dismissed the Chief Ministers without giving them an opportunity to prove their majority in the legislative assembly.

The salary and allowances of the Chief Minister are determined by the state legislature. In addition to the salary and allowances, which are payable to a member of the state legislature, he/she gets a sumptuary allowance, free accommodation, travelling allowance, medical facilities, etc.

POWERS AND FUNCTIONS OF CHIEF MINISTER

The powers and functions of the Chief Minister can be studied under the following heads:

In Relation to Council of Ministers

The Chief Minister enjoys the following powers as head of the state council of ministers:

(a) The governor appoints only those persons as ministers who are recommended by the Chief Minister.
(b) He/she allocates and reshuffles the portfolios among ministers.
(c) He/she can ask a minister to resign or advise the governor to dismiss him/her in case of difference of opinion.
(d) He/she presides over the meetings of the council of ministers and influences its decisions.
(e) He/she guides, directs, controls and coordinates the activities of all the ministers.
(f) He/she can bring about the collapse of the council of ministers by resigning from office. Since the Chief Minister is the head of the council of ministers, his/her resignation or death automatically dissolves the council of ministers. The resignation or death of any other minister, on the other hand, merely creates a vacancy, which the Chief Minister may or may not like to fill.

In Relation to the Governor

The Chief Minister enjoys the following powers in relation to the governor:

(a) He/she is the principal channel of communication between the governor and the council of ministers.[3] It is the duty of the Chief Minister:
  (i) to communicate to the Governor of the state all decisions of the council of ministers relating to the administration of the affairs of the state and proposals for legislation;
  (ii) to furnish such information relating to the administration of the affairs of the state and proposals for legislation as the governor may call for; and
  (iii) if the governor so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.
(b) He/she advises the governor with regard to the appointment of important officials like advocate general, chairman and members of the state public service commission, state election commissioner, and so on.

In Relation to State Legislature

The Chief Minister enjoys the following powers as the leader of the house:

(a) He/she advises the governor with regard to the summoning and proroguing of the sessions of the state legislature.
(b) He/she can recommend the dissolution of the legislative assembly to the governor at any time.
(c) He/she announces the government policies on the floor of the house.

Other Powers and Functions

In addition, the Chief Minister also performs the following functions:

(a) He/she is the chairman of the State Planning Board.

[3] Article 167 specifically deals with this function of the Chief Minister.

(b) He/she acts as a vice-chairman of the concerned zonal council by rotation, holding office for a period of one year at a time.[4]
(c) He/she is a member of the Inter-State Council and the Governing Council of NITI Aayog, both headed by the prime minister.
(d) He/she is the chief spokesman of the state government.
(e) He/she is the crisis manager-in-chief at the political level during emergencies.
(f) As a leader of the state, he/she meets various sections of the people and receives memoranda from them regarding their problems, and so on.
(g) He/she is the leader of the party in power.
(h) He/she is the political head of the services.

Thus, he/she plays a very significant and highly crucial role in the state administration. However, the discretionary powers enjoyed by the governor reduces to some extent the power, authority, influence, prestige and role of the Chief Minister in the state administration.

RELATIONSHIP WITH THE GOVERNOR

The following provisions of the Constitution deal with the relationship between the governor and the Chief Minister:

1. *Article 163:* There shall be a council of ministers with the Chief Minister as the head to aid and advise the governor on the exercise of his/her functions, except in so far as he/she is required to exercise his/her functions or any of them in his/her discretion.
2. *Article 164:*
   (a) The Chief Minister shall be appointed by the governor and other ministers shall be appointed by the governor on the advise of the Chief Minister;
   (b) The ministers shall hold office during the pleasure of the governor; and
   (c) The council of ministers shall be collectively responsible to the legislative assembly of the state.
3. *Article 167:* It shall be the duty of the Chief Minister:
   (a) to communicate to the governor of the state all decisions of the council of ministers relating to the administration of the affairs of the state and proposals for legislation;
   (b) to furnish such information relating to the administration of the affairs of the state and proposals for legislation as the governor may call for; and
   (c) if the governor so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.

[4]Union home minister is the chairman of all the zonal councils.

Table 31.1 Articles Related to Chief Minister at a Glance

Article No.	Subject-matter
163.	Council of Ministers to aid and advise Governor
164.	Other provisions as to Ministers
166.	Conduct of business of the Government of a State
167.	Duties of Chief Minister as respects the furnishing of information to Governor, etc.
177.	Rights of Ministers as respects the Houses

CHAPTER 32 State Council of Ministers

As the Constitution of India provides for a parliamentary system of government in the states on the Union pattern, the council of ministers headed by the chief minister is the real executive authority in the politico-administrative system of a state. The council of ministers in the states is constituted and function in the same way as the council of ministers at the Centre.

The principles of parliamentary system of government are not detailed in the Constitution; but two Articles (163 and 164) deal with them in a broad, sketchy and general manner. Article 163 deals with the status of the council of ministers while Article 164 deals with the appointment, tenure, responsibility, qualifications, oath and salaries and allowances of the ministers.

CONSTITUTIONAL PROVISIONS

Article 163—Council of Ministers to aid and advise Governor

1. There shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his/her functions, except in so far as he/she is required to exercise his/her functions in his/her discretion.
2. If any question arises whether a matter falls within the Governor's discretion or not, decision of the Governor shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he/she ought or ought not to have acted in his/her discretion.
3. The advice tendered by Ministers to the Governor shall not be enquired into in any court.

Article 164—Other Provisions as to Ministers

1. The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister. However, in the states of Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the scheduled castes and backward classes or any other work. The state of Bihar was excluded from this provision by the 94th Amendment Act of 2006.
2. The total number of ministers, including the chief minister, in the council of ministers in a state shall not exceed 15 per cent of the total strength of the legislative assembly of that state. But, the number of ministers, including the chief minister, in a state shall not be less than 12. This provision was added by the 91st Amendment Act of 2003.
3. A member of either House of state legislature belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. This provision was also added by the 91st Amendment Act of 2003.
4. The ministers shall hold office during the pleasure of the Governor.

5. The council of ministers shall be collectively responsible to the state Legislative Assembly.
6. The Governor shall administer the oaths of office and secrecy to a minister.
7. A minister who is not a member of the state legislature for any period of six consecutive months shall cease to be a minister.
8. The salaries and allowances of ministers shall be determined by the state legislature.

Article 166—Conduct of Business of the Government of a State

1. All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.
2. Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor. Further, the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.
3. The Governor shall make rules for the more convenient transaction of the business of the government of the state, and for the allocation among ministers of the said business in so far as it is not business with respect to which the Governor is required to act at his/her discretion.

Article 167—Duties of Chief Minister

It shall be the duty of the Chief Minister of each state

1. to communicate to the governor of the state all decisions of the council of ministers relating to the administration of the affairs of the state and proposals for legislation
2. to furnish such information relating to the administration of the affairs of the state and proposals for legislation as the governor may call for
3. If the governor so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council

Article 177—Rights of Ministers as Respects the Houses

Every minister shall have the right to speak and take part in the proceedings of the Assembly (and also the Council where it exists) and any Committee of the State Legislature of which he/she may be named a member. But he/she shall not be entitled to vote.

NATURE OF ADVICE BY MINISTERS

Article 163 provides for a council of ministers with the chief minister at the head to aid and advise the governor in the exercise of his/her functions except for the discretionary ones. If any question arises whether a matter falls within the governor's discretion or not, the decision of the governor is final and the validity of anything done by him/her cannot be called in question on the ground that he/she ought or ought not to have acted at his/her discretion. Further, the nature of advice tendered by ministers to the governor cannot be enquired by any court. This provision emphasises the intimate and the confidential relationship between the governor and the ministers.

In *Shamsher Singh* case[1] (1974), the Supreme Court held that except in spheres where the governor is to act at his/her discretion, the governor has to act on the aid and advice of the council of ministers in the exercise of his/her powers and functions. He/she is not required to act personally without the aid and advice of the council of ministers or against the aid and advice of the council of ministers. Wherever the Constitution requires the satisfaction of the governor, the satisfaction is not the personal satisfaction of the governor but it is the satisfaction of the council of ministers.

[1] *Shamsher Singh* vs. *State of Punjab* (1974).

APPOINTMENT OF MINISTERS

The chief minister is appointed by the governor. The other ministers are appointed by the governor on the advice of the chief minister. This means that the governor can appoint only those persons as ministers who are recommended by the chief minister.

But, there should be a tribal welfare minister in Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha[1a]. Originally, this provision was applicable to Bihar, Madhya Pradesh and Odisha. The 94th Amendment Act of 2006 freed Bihar from the obligation of having a tribal welfare minister as there are no Scheduled Areas in Bihar now and the fraction of population of the Scheduled Tribes is very small. The same Amendment also extended the above provision to the newly formed states of Chhattisgarh and Jharkhand.

Usually, the members of the state legislature, either the legislative assembly or the legislative council, are appointed as ministers. A person who is not a member of either House of the state legislature can also be appointed as a minister. But, within six months, he/she must become a member (either by election or by nomination) of either House of the state legislature, otherwise, he/she ceases to be a minister.

A minister who is a member of one House of the state legislature has the right to speak and to take part in the proceedings of the other House. But, he/she can vote only in the House of which he/she is a member.

OATH AND SALARY OF MINISTERS

Before a minister enters upon his/her office, the governor administers to him/her the oaths of office and secrecy. In his/her oath of office, the minister swears:

1. to bear true faith and allegiance to the Constitution of India,
2. to uphold the sovereignty and integrity of India,
3. to faithfully and conscientiously discharge the duties of his/her office, and
4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will.

In his/her oath of secrecy, the minister swears that he/she will not directly or indirectly communicate or reveal to any person(s) any matter that is brought under his/her consideration or becomes known to him/her as a state minister except as may be required for the due discharge of his/her duties as such minister.

The salaries and allowances of ministers are determined by the state legislature from time to time. A minister gets salary and allowances, which are payable to a member of the state legislature. Additionally, he/she gets a sumptuary allowance (according to his/her rank), free accommodation, travelling allowance, medical facilities, etc.

RESPONSIBILITY OF MINISTERS

Collective Responsibility

The fundamental principle underlying the working of parliamentary system of government is the principle of collective responsibility. Article 164 clearly states that the council of ministers is collectively responsible to the legislative assembly of the state. This means that all the ministers own joint responsibility to the legislative assembly for all their acts of omission and commission. They work as a team and swim or sink together. When the legislative assembly passes a no-confidence motion against the council of ministers, all the ministers have to resign including those ministers who are from the legislative council[2]. Alternatively,

[1a] They may, in addition, be in charge of the welfare of the SCs and BCs or any other work.

[2] Each minister need not resign separately; the resignation of the chief minister amounts to the resignation of the entire council of ministers.

the council of ministers can advice the governor to dissolve the legislative assembly on the ground that the House does not represent the views of the electorate faithfully and call for fresh elections. The governor may not oblige the council of ministers which has lost the confidence of the legislative assembly.

The principle of collective responsibility also means that the cabinet decisions bind all cabinet ministers (and other ministers) even if they deferred in the cabinet meeting. It is the duty of every minister to stand by the cabinet decisions and support them both within and outside the state legislature. If any minister disagrees with a cabinet decision and is not prepared to defend it, he/she must resign. Several ministers have resigned in the past owing to their differences with the cabinet.

Individual Responsibility

Article 164 also contains the principle of individual responsibility. It states that the ministers hold office during the pleasure of the governor. This means that the governor can remove a minister at a time when the council of ministers enjoys the confidence of the legislative assembly. But, the governor can remove a minister only on the advice of the chief minister. In case of difference of opinion or dissatisfaction with the performance of a minister, the chief minister can ask him/her to resign or advise the governor to dismiss him/her. By exercising this power, the chief minister can ensure the realisation of the rule of collective responsibility.

No Legal Responsibility

As at the Centre, there is no provision in the Constitution for the system of legal responsibility of the minister in the states. It is not required that an order of the governor for a public act should be countersigned by a minister. Moreover, the courts are barred from enquiring into the nature of advice rendered by the ministers to the governor.

COMPOSITION OF THE COUNCIL OF MINISTERS

The Constitution does not specify the size of the state council of ministers or the ranking of ministers. They are determined by the chief minister according to the exigencies of the time and requirements of the situation.

Like at the Centre, in the states too, the council of ministers consists of three categories of ministers, namely, cabinet ministers, ministers of state, and deputy ministers. The difference between them lies in their respective ranks, emoluments, and political importance. At the top of all these ministers stands the chief minister—supreme governing authority in the state.

At times, the council of ministers may also include a deputy chief minister. The deputy chief ministers are appointed mostly for local political reasons.

The cabinet ministers head the important departments of the state government like home, education, finance, agriculture and so forth[3]. They are members of the cabinet, attend its meetings and play an important role in deciding policies. Thus, their responsibilities extend over the entire gamut of state government.

The ministers of state can either be given independent charge of departments or can be attached to cabinet ministers. However, they are not members of the cabinet and do not attend the cabinet meetings unless specially invited when something related to their departments are considered by the cabinet.

Next in rank are the deputy ministers. They are not given independent charge of departments. They are attached to the cabinet ministers and assist them in their administrative, political and parliamentary duties. They are not members of the cabinet and do not attend cabinet meetings.

[3]The term 'ministry' or 'ministries' is used only in the centre and not in the states. In other words, the state government is divided into departments and not ministries.

CABINET

A smaller body called *cabinet* is the nucleus of the council of ministers. It consists of only the cabinet ministers. It is the real centre of authority in the state government. It performs the following role:

1. It is the highest decision-making authority in the politico-administrative system of a state.
2. It is the chief policy-formulating body of the state government.
3. It is the supreme executive authority of the state government.
4. It is the chief coordinator of the state administration.
5. It is an advisory body to the governor.
6. It is the chief crisis manager and thus deals with all emergency situations.
7. It deals with all major legislative and financial matters.
8. It exercises control over higher appointments like constitutional authorities and senior secretariat administrators.

CABINET COMMITTEES

The cabinet works through various committees called cabinet committees. They are of two types—standing and ad hoc. The former are of a permanent nature while the latter are of a temporary nature.

They are set up by the chief minister according to the exigencies of the time and requirements of the situation. Hence, their number, nomenclature and composition varies from time to time.

They not only sort out issues and formulate proposals for the consideration of the cabinet but also take decisions. However, the cabinet can review their decisions.

Table 32.1 Articles Related to the State Council of Ministers at a Glance

Article No.	Subject-matter
163.	Council of Ministers to aid and advise Governor
164.	Other provisions as to Ministers
166.	Conduct of business of the Government of a State
167.	Duties of Chief Minister as respects the furnishing of information to Governor, etc.
177.	Rights of Ministers as respects the Houses

CHAPTER 33 State Legislature

The state legislature occupies a pre-eminent and central position in the political system of a state.

Articles 168 to 212 in Part VI of the Constitution deal with the organisation, composition, duration, officers, procedures, privileges, powers and so on of the state legislature. Though these are similar to that of Parliament, there are some differences as well.

ORGANISATION OF STATE LEGISLATURE

There is no uniformity in the organisation of state legislatures. Most of the states have an unicameral system, while others have a bicameral system. At present, only six states have two Houses (bicameral). These are Andhra Pradesh, Telangana, Uttar Pradesh, Bihar, Maharashtra and Karnataka. The Jammu and Kashmir Legislative Council was abolished by the Jammu and Kashmir Reorganisation Act, 2019.[1] The Tamil Nadu Legislative Council Act, 2010 has not come into force. The Legislative Council in Andhra Pradesh was revived by the Andhra Pradesh Legislative Council Act, 2005. The 7th Amendment Act of 1956 provided for a Legislative Council in Madhya Pradesh. However, a notification to this effect has to be made by the President. So far, no such notification has been made. Hence, Madhya Pradesh continues to have one House only.

The twenty-two states have a unicameral system. Here, the state legislature consists of the governor and the legislative assembly. In the states having bicameral system, the state legislature consists of the governor, the legislative council and the legislative assembly. The legislative council (Vidhan Parishad) is the upper house (second chamber or house of elders), while the legislative assembly (Vidhan Sabha) is the lower house (first chamber or popular house).

The Constitution (Article 169) provides for the abolition or creation of legislative councils in states. Accordingly, the Parliament can abolish a legislative council (where it already exists) or create it (where it does not exist), if the legislative assembly of the concerned state passes a resolution to that effect. Such a specific resolution must be passed by the state assembly by a special majority, that is, a majority of the total membership of the assembly and a majority of not less than two-thirds of the members of the assembly present and voting. This Act of Parliament is not to be deemed as an amendment of the Constitution for the purposes of Article 368 and is passed like an ordinary piece of legislation (ie, by simple majority).

"The idea of having a second chamber in the states was criticised in the Constituent Assembly on the ground that it was not representative of the people, that it delayed legislative process and that it was an expensive institution[2]." Consequently the provision was made for the abolition or creation of a

[1]The erstwhile state of Jammu and Kashmir had adopted a bicameral legislature by its own state Constitution, which was separate from the Indian Constitution.

[2]M.P. Jain, *Indian Constitutional Law,* Wadhwa Fourth edition, p. 159

legislative council to enable a state to have a second chamber or not according to its own willingness and financial strength. For example, Andhra Pradesh got the legislative council created in 1957 and got the same abolished in 1985. The Legislative Council in Andhra Pradesh was again revived in 2007, after the enactment of the Andhra Pradesh Legislative Council Act, 2005. The legislative council of Tamil Nadu had been abolished in 1986 and that of Punjab and West Bengal in 1969.

In 2010, the Legislative Assembly of Tamil Nadu passed a resolution for the revival of the Legislative Council in the state. Accordingly, the Parliament enacted the Tamil Nadu Legislative Council Act, 2010 which provided for the creation of Legislative Council in the state. However, before this Act was enforced, the Legislative Assembly of Tamil Nadu passed another resolution in 2011 seeking the abolition of the proposed Legislative Council.

The various laws made by the Parliament (under Article 169 of the constitution) for the abolition or creation of State Legislative Councils are mentioned in Table 33.4.

COMPOSITION OF TWO HOUSES

Composition of Assembly

Strength The legislative assembly consists of representatives directly elected by the people on the basis of universal adult franchise. Its maximum strength is fixed at 500 and minimum strength at 60. It means that its strength varies from 60 to 500 depending on the population size of the state. However, in case of Arunachal Pradesh, Sikkim and Goa, the minimum number is fixed at 30 and in case of Mizoram and Nagaland, it is 40 and 46 respectively. Further, some members of the legislative assemblies in Sikkim and Nagaland are also elected indirectly.

The strength of legislative assemblies is indicated in Table 33.2.

Nominated Member Before 2020, the Governor nominated one member from the Anglo-Indian community[3] to the assembly, if the community was not adequately represented. Originally, this provision was to operate for ten years (i.e., upto 1960) only. Later, this duration has been extended continuously since then by ten years each time. The last extension upto 2020 was made by the 95th Amendment Act, 2009. But, the 104th Amendment Act, 2019, has not extended further the operation of this provision. In other words, the Amendment discontinued this provision of special representation of the Anglo-Indian community in the Assembly by nomination. Consequently, this provision ceased to have effect on the 25th January, 2020.

Territorial Constituencies For the purpose of holding direct elections to the assembly, each state is divided into territorial constituencies. The demarcation of these constituencies is done in such a manner that the ratio between the population of each constituency and the number of seats allotted to it is the same throughout the state. In other words, the Constitution ensures that there is uniformity of representation between different constituencies in the state. The expression 'population' means, the population as ascertained at the last preceding census of which the relevant figures have been published.

Readjustment after each census After each census, a readjustment is to be made in the **(a)** total number of seats in the assembly of each state and **(b)** the division of each state into territorial constituencies. The Parliament is empowered to determine the authority and the manner in which it is to be made. Accordingly, Parliament has enacted the Delimitation Commission Acts in 1952, 1962, 1972 and 2002 for this purpose.

[3]An Anglo-Indian means a person whose father or any other male progenitor in the male line is or was of European descent, but who is domiciled within the territory of India and is or was born within such territory of parents habitually resident therein and not established there for temporary purposes only.

The 42nd Amendment Act of 1976 had frozen total number of seats in the assembly of each state and the division of such state into territorial constituencies till the year 2000 at the 1971 level. This ban on readjustment has been extended for another years (i.e., upto year 2026) by the 84th Amendment Act of 2001 with the same objective of encouraging population limiting measures.

The 84th Amendment Act of 2001 also empowered the government to undertake readjustment and rationalisation of territorial constituencies in a state on the basis of the population figures of 1991 census. Later, the 87th Amendment Act of 2003 provided for the delimitation of constituencies on the basis of 2001 census and not 1991 census. However, this can be done without altering the total number of seats in the assembly of each state.

Reservation of seats for SCs and STs The Constitution provided for the reservation of seats for scheduled castes and scheduled tribes in the assembly of each state on the basis of population ratios.[4]

Originally, this reservation was to operate for ten years (i.e., up to 1960). But this duration has been extended continuously since then by 10 years each time. Now, under the 104th Amendment Act of 2019, this reservation is to last until 2030.

The seats reserved for SCs and STs in the legislative assemblies is indicated in Table 33.2.

Composition of Council

Strength Unlike the members of the legislative assembly, the members of the legislative council are indirectly elected. The maximum strength of the council is fixed at one-third of the total strength of the assembly and the minimum strength is fixed at 40. It means that the size of the council depends on the size of the assembly of the concerned state. This is done to ensure the predominance of the directly elected House (assembly) in the legislative affairs of the state. Though the Constitution has fixed the maximum and the minimum limits, the actual strength of a Council is fixed by Parliament.

The strength of legislature councils is indicated in Table 33.2.

Manner of Election Of the total number of members of a legislative council:

1. 1/3 are elected by the members of local bodies in the state like municipalities, district boards, etc.,
2. 1/12 are elected by graduates of three years standing and residing within the state,
3. 1/12 are elected by teachers of three years standing in the state, not lower in standard than secondary school,
4. 1/3 are elected by the members of the legislative assembly of the state from amongst persons who are not members of the assembly, and
5. the remainder are nominated by the governor from amongst persons who have a special knowledge or practical experience of literature, science, art, cooperative movement and social service.

Thus, 5/6 of the total number of members of a legislative council are indirectly elected and 1/6 are nominated by the governor. The members are elected in accordance with the system of proportional representation by means of a single transferable vote.

This scheme of composition of a legislative council as laid down in the Constitution is tentative and not final. The Parliament is authorised to modify or replace the same. However, it has not enacted any such law so far.

DURATION OF TWO HOUSES

Duration of Assembly

Like the Lok Sabha, the legislative assembly is not a continuing chamber. Its normal term is five years from the date of its first meeting

[4]This means that the number of assembly seats reserved in a state for such castes and tribes is to bear the same proportion to the total number of seats in the assembly as the population of such castes and tribes in the concerned state bears to the total population of the state.

after the general elections[8]. The expiration of the period of five years operates as automatic dissolution of the assembly. However, the governor is authorised to dissolve the assembly at any time (i.e., even before the completion of five years) to pave the way for fresh elections.

Further, the term of the assembly can be extended during the period of national emergency by a law of Parliament for one year at a time (for any length of time). However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate. This means that the assembly should be re-elected within six months after the revocation of emergency.

Duration of Council

Like the Rajya Sabha, the legislative council is a continuing chamber, that is, it is a permanent body and is not subject to dissolution. But, one-third of its members retire on the expiration of every second year. So, a member continues as such for six years. The vacant seats are filled up by fresh elections and nominations (by governor) at the beginning of every third year. The retiring members are also eligible for re-election and re-nomination any number of times.

MEMBERSHIP OF STATE LEGISLATURE

1. Qualifications

The Constitution lays down the following qualifications for a person to be chosen a member of the state legislature.

(a) He/she must be a citizen of India.
(b) He/she must make and subscribe to an oath or affirmation before the person authorised by the Election Commission for this purpose. In his/her oath or affirmation, he/she swears –
  (i) To bear true faith and allegiance to the Constitution of India
  (ii) To uphold the sovereignty and integrity of India
(c) He/she must be not less than 30 years of age in the case of the legislative council and not less than 25 years of age in the case of the legislative assembly.
(d) He/she must possess other qualifications prescribed by Parliament.

Accordingly, the Parliament has laid down the following additional qualifications in the Representation of People Act (1951):

(a) A person to be elected to the legislative council must be an elector for an assembly constituency in the concerned state and to be qualified for the governor's nomination, he/she must be a resident in the concerned state.
(b) A person to be elected to the legislative assembly must be an elector for an assembly constituency in the concerned state.
(c) He/she must be a member of a scheduled caste or scheduled tribe if he/she wants to contest a seat reserved for them. However, a member of scheduled castes or scheduled tribes can also contest a seat not reserved for them.

2. Disqualifications

Under the Constitution, a person shall be disqualified for being chosen as and for being a member of the legislative assembly or legislative council of a state:

(a) if he/she holds any office of profit under the Union or state government (except that of a minister or any other office exempted by state legislature[5]),
(b) if he/she is of unsound mind and stands so declared by a court,
(c) if he/she is an undischarged insolvent,
(d) if he/she is not a citizen of India or has voluntarily acquired the citizenship of a foreign state or is under any acknowledgement of allegiance to a foreign state, and
(e) if he/she is so disqualified under any law made by Parliament.

[5]A minister in the union or state government is not considered as holding an office of profit. Also, the state legislature can declare that a particular office of profit will not disqualify its holder from its membership.

Accordingly, the Parliament has prescribed a number of additional disqualifications in the Representation of People Act (1951). These are similar to those for Parliament. These are mentioned here:

1. He/she must not have been found guilty of certain electoral offences or corrupt practices in the elections.
2. He/she must not have been convicted for any offence resulting in imprisonment for two or more years. But, the detention of a person under a preventive detention law is not a disqualification.
3. He/she must not have failed to lodge an account of his/her election expenses within the time.
4. He/she must not have any interest in government contracts, works or services.
5. He/she must not be a director or managing agent nor hold an office of profit in a corporation in which the government has at least 25 per cent share.
6. He/she must not have been dismissed from government service for corruption or disloyalty to the state.
7. He/she must not have been convicted for promoting enmity between different groups or for the offence of bribery.
8. He/she must not have been punished for preaching and practicing social crimes such as untouchability, dowry and *sati*.

On the question whether a member has become subject to any of the above disqualifications, the governor's decision is final. However, he/she should obtain the opinion of the Election Commission and act accordingly.

Disqualification on Ground of Defection The Constitution also lays down that a person shall be disqualified for being a member of either House of state legislature if he/she is so disqualified on the ground of defection under the provisions of the Tenth Schedule.

The question of disqualification under the Tenth Schedule is decided by the Chairman, in the case of legislative council and, Speaker, in the case of legislative assembly (and not by the governor). In *Kihoto Hollohan* case[6] (1992), the Supreme Court ruled that the decision of Chairman/Speaker in this regard is subject to judicial review.

3. | Oath or Affirmation

Every member of either House of state legislature, before taking his/her seat in the House, has to make and subscribe an oath or affirmation before the governor or some person appointed by him/her for this purpose.

In this oath, a member of the state legislature swears:

(a) to bear true faith and allegiance to the Constitution of India;
(b) to uphold the sovereignty and integrity of India; and
(c) to faithfully discharge the duty of his/her office.

Unless a member takes the oath, he/she cannot vote and participate in the proceedings of the House and does not become eligible to the privileges and immunities of the state legislature.

A person is liable to a penalty of ₹500 for each day he/she sits or votes as a member in a House:

(a) before taking and subscribing the prescribed oath or affirmation; or
(b) when he/she knows that he/she is not qualified or that he/she is disqualified for its membership; or
(c) when he/she knows that he/she is prohibited from sitting or voting in the House by virtue of any law made by the Parliament or the state legislature.

The members of a state legislature are entitled to receive such salaries and allowances as may from time to time be determined by the state legislature.

4. | Vacation of Seats

In the following cases, a member of the state legislature vacates his/her seat:

(a) *Double Membership:* A person cannot be a member of both Houses of state legislature at one and the same time. If a person is elected to both the Houses, his/her seat in one of the Houses falls

[6] *Kihoto Hollohan* vs. *Zachillhu* (1992).

vacant as per the provisions of a law made by the state legislature.

(b) *Disqualification:* If a member of the state legislature becomes subject to any of the disqualifications, his/her seat becomes vacant.

(c) *Resignation:* A member may resign from his/her seat by writing to the Chairman of legislative council or Speaker of legislative assembly, as the case may be. The seat falls vacant when the resignation is accepted[7].

(d) *Absence:* A House of the state legislature can declare the seat of a member vacant if he/she absents himself/herself from all its meeting for a period of sixty days without its permission.

(e) *Other Cases:* A member has to vacate his/her seat in the either House of state legislature,

(i) if his/her election is declared void by the court,

(ii) if he/she is expelled by the House,

(iii) if he/she is elected to the office of president or office of vice-president, and

(iv) if he/she is appointed to the office of governor of a state.

PRESIDING OFFICERS OF STATE LEGISLATURE

Each House of state legislature has its own presiding officer. There is a Speaker and a Deputy Speaker for the legislative assembly and a Chairman and a Deputy Chairman for the legislative council. A panel of chairman for the assembly and a panel of vice-chairman for the council is also appointed.

The salaries and allowances of the Speaker and the Deputy Speaker of the assembly and the Chairman and the Deputy Chairman of the council are fixed by the state legislature. They are charged on the Consolidated Fund of the State and thus are not subject to the annual vote of the state legislature.

[7]However, the Chairman/Speaker need not accept the resignation if he/she is satisfied that it is not voluntary or genuine.

Speaker of Assembly

The Speaker is elected by the assembly itself from amongst its members.

Usually, the Speaker remains in office during the life of the assembly. However, he/she vacates his/her office earlier in any of the following three cases:

1. if he/she ceases to be a member of the assembly;
2. if he/she resigns by writing to the deputy speaker; and
3. if he/she is removed by a resolution passed by a majority of all the then members of the assembly (i.e., an effective majority). Such a resolution can be moved only after giving 14 days advance notice.

The Speaker has the following powers and duties:

1. He/she maintains order and decorum in the assembly for conducting its business and regulating its proceedings. This is his/her primary responsibility and he/she has final power in this regard.
2. He/she is the final interpreter of the provisions of (a) the Constitution of India, (b) the rules of procedure and conduct of business of assembly, and (c) the legislative precedents, within the assembly.
3. He/she adjourns the assembly or suspends the meeting in the absence of a quorum.
4. He/she does not vote in the first instance. But, he/she can exercise a casting vote in the case of a tie.
5. He/she can allow a 'secret' sitting of the House at the request of the leader of the House.
6. He/she decides whether a bill is a Money Bill or not and his/her decision on this question is final.
7. He/she decides the questions of disqualification of a member of the assembly, arising on the ground of defection under the provisions of the Tenth Schedule.
8. He/she appoints the chairman of all the committees of the assembly and supervises their functioning. He/she is the chairman of the Business Advisory Committee, the Rules Committee and the General Purpose Committee.

Deputy Speaker of Assembly

Like the Speaker, the Deputy Speaker is also elected by the assembly itself from amongst its members. He/she is elected after the election of the Speaker has taken place.

Like the Speaker, the Deputy Speaker remains in office usually during the life of the assembly. However, he/she also vacates his/her office earlier in any of the following three cases:

1. if he/she ceases to be a member of the assembly;
2. if he/she resigns by writing to the speaker; and
3. if he/she is removed by a resolution passed by a majority of all the then members of the assembly (i.e., an effective majority). Such a resolution can be moved only after giving 14 days' advance notice.

The Deputy Speaker performs the duties of the Speaker's office when it is vacant. He/she also acts as the Speaker when the latter is absent from the sitting of assembly. In both the cases, he/she has all the powers of the Speaker.

The Speaker nominates from amongst the members a panel of chairman. Any one of them can preside over the assembly in the absence of the Speaker or the Deputy Speaker. He/she has the same power as the speaker when so presiding. He/she holds office until a new panel of chairman is nominated.

Chairman of Council

The Chairman is elected by the council itself from amongst its members.

The Chairman vacates his/her office in any of the following three cases:

1. if he/she ceases to be a member of the council;
2. if he/she resigns by writing to the deputy chairman; and
3. if he/she is removed by a resolution passed by a majority of all the then members of the council (i.e., an effective majority). Such a resolution can be moved only after giving 14 days advance notice.

As a presiding officer, the power and functions of the Chairman in the council are similar to those of the Speaker in the assembly. However, the Speaker has one special power which is not enjoyed by the Chairman. The Speaker decides whether a bill is a Money Bill or not and his/her decision on this question is final.

Deputy Chairman of Council

Like the Chairman, the Deputy Chairman is also elected by the council itself from amongst its members.

The deputy chairman vacates his/her office in any of the following three cases:

1. if he/she ceases to be a member of the council;
2. if he/she resigns by writing to the Chairman; and
3. if he/she is removed by a resolution passed by a majority of all the then members of the council (i.e., an effective majority). Such a resolution can be moved only after giving 14 days advance notice.

The Deputy Chairman performs the duties of the Chairman's office when it is vacant. He/she also acts as the Chairman when the latter is absent from the sitting of the council. In both the cases, he/she has all the powers of the Chairman.

The Chairman nominates from amongst the members a panel of vice-chairman. Any one of them can preside over the council in the absence of the Chairman or the Deputy Chairman. He/she has the same powers as the chairman when so presiding. He/she holds office until a new panel of vice-chairman is nominated.

SESSIONS OF STATE LEGISLATURE

Summoning

The governor from time to time summons each House of state legislature to meet. The maximum gap between the two sessions of state legislature cannot be more than six months, ie, the state legislature should meet

at least twice a year. A session of the state legislature consists of many sittings.

Adjournment

An adjournment suspends the work in a sitting for a specified time which may be hours, days or weeks.

Adjournment *sine die* means terminating a sitting of the state legislature for an indefinite period. The power of the adjournment as well as adjournment *sine die* lies with the presiding officer of the House.

Prorogation

The presiding officer (Speaker or Chairman) declares the House adjourned *sine die*, when the business of the session is completed. Within the next few days, the governor issues a notification for prorogation of the session.

However, the governor can also prorogue the House which is in session. Unlike an adjournment, a prorogation terminates a session of the House.

Dissolution

The legislative council, being a permanent house, is not subject to dissolution. Only the legislative assembly is subject to dissolution. Unlike a prorogation, a dissolution ends the very life of the existing House, and a new House is constituted after the general elections are held.

The position with respect to lapsing of bills on the dissolution of the assembly is mentioned below:

1. A Bill pending in the assembly lapses (whether originating in the assembly or transmitted to it by the council).
2. A Bill passed by the assembly but pending in the council lapses.
3. A Bill pending in the council but not passed by the assembly does not lapse.
4. A Bill passed by the assembly (in a unicameral state) or passed by both the houses (in a bicameral state) but pending assent of the governor or the President does not lapse.
5. A Bill passed by the assembly (in a unicameral state) or passed by both the Houses (in a bicameral state) but returned by the president for reconsideration of House (s) does not lapse.

Quorum

Quorum is the minimum number of members required to be present in the House before it can transact any business. It is ten members or one-tenth of the total number of members of the House (including the presiding officer), whichever is greater. If there is no quorum during a meeting of the House, it is the duty of the presiding officer either to adjourn the House or to suspend the meeting until there is a quorum.

Voting in House

All matters at any sitting of either House are decided by a majority of votes of the members present and voting excluding the presiding officer. Only a few matters which are specifically mentioned in the Constitution, require either effective majority or special majority, not simple majority. The presiding officer (i.e., Speaker in the case of assembly or chairman in the case of council or the person acting as such) does not vote in the first instance, but exercises a casting vote in the case of an equality of votes.

Language in State Legislature

The Constitution has declared the official language(s) of the state or Hindi or English, to be the languages for transacting business in the state legislature. However, the presiding officer can permit a member to address the House in his/her mother-tongue.

The state legislature is authorised to decide whether to continue or discontinue English as a floor language after the completion of fifteen years from the commencement of the Constitution (i.e., from 1965). In case of Himachal Pradesh, Manipur, Meghalaya and Tripura, this time limit is twenty-five years and that of Arunachal Pradesh, Goa and Mizoram, it is forty years.

Rights of Ministers and Advocate General

In addition to the members of a House, every minister and the advocate general of the state have the right to speak and take part in the proceedings of either House or any of its committees of which he/she is named a member, without being entitled to vote. There are two reasons underlying this constitutional provision:

1. A minister can participate in the proceedings of a House, of which he/she is not a member.
2. A minister, who is not a member of either House, can participate in the proceedings of both the Houses[8].

LEGISLATIVE PROCEDURE IN STATE LEGISLATURE

Ordinary Bills

Bill in the Originating House An ordinary bill can originate in either House of the state legislature (in case of a bicameral legislature). Such a bill can be introduced either by a minister or by any other member. The bill passes through three stages in the originating House, viz,

1. First reading,
2. Second reading, and
3. Third reading.

After the bill is passed by the originating House, it is transmitted to the second House for consideration and passage. A bill is deemed to have been passed by the state legislature only when both the Houses have agreed to it, either with or without amendments. In case of a unicameral legislature, a bill passed by the legislative assembly is sent directly to the governor for his/her assent.

Bill in the Second House In the second House also, the bill passes through all the three stages, that is, first reading, second reading and third reading.

When a bill is passed by the legislative assembly and transmitted to the legislative council, the latter has four alternatives before it:

1. it may pass the bill as sent by the assembly (i.e., without amendments);
2. it may pass the bill with amendments and return it to the assembly for reconsideration;
3. it may reject the bill altogether; and
4. it may not take any action and thus keep the bill pending.

If the council passes the bill without amendments or the assembly accepts the amendments suggested by the council, the bill is deemed to have been passed by both the Houses and the same is sent to the the governor for his/her assent. On the other hand, if the assembly rejects the amendments suggested by the council or the council rejects the bill altogether or the council does not take any action for three months, then the assembly may pass the bill again and transmit the same to the council. If the council rejects the bill again or passes the bill with amendments not acceptable to the assembly or does not pass the bill within one month, then the bill is deemed to have been passed by both the Houses in the form in which it was passed by the assembly for the second time.

Therefore, the ultimate power of passing an ordinary bill is vested in the assembly. At the most, the council can detain or delay the bill for a period of four months—three months in the first instance and one month in the second instance. The Constitution does not provide for the mechanism of joint sitting of both the Houses to resolve the disagreement between the two Houses over a bill. On the other hand, there is a provision for joint sitting of the Lok Sabha and the Rajya Sabha to resolve a disagreement between the two over an ordinary bill. Moreover, when a bill, which has originated in the council and was sent to the assembly, is rejected by the assembly, the bill ends and becomes dead.

Thus, the council has been given much lesser significance, position and authority than that of the Rajya Sabha at the Centre.

[8]A person can remain a minister for six months, without being a member of either house of the state legislature.

Assent of the Governor Every bill, after it is passed by the assembly or by both the Houses in case of a bicameral legislature, is presented to the governor for his/her assent. There are four alternatives before the governor:

1. he/she may give his/her assent to the bill;
2. he/she may withhold his/her assent to the bill;
3. he/she may return the bill for reconsideration of the House or Houses; and
4. he/she may reserve the bill for the consideration of the President.

If the governor gives his/her assent to the bill, the bill becomes an Act and is placed on the Statute Book. If the governor withholds his/her assent to the bill, the bill ends and does not become an Act. If the governor returns the bill for reconsideration and if the bill is passed by the House or both the Houses again, with or without amendments, and presented to the governor for his/her assent, the governor must give his/her assent to the bill. Thus, the governor enjoys only a *suspensive veto*. The position is same at the Central level also.

Assent of the President When a bill is reserved by the governor for the consideration of the President, the President may either give his/her assent to the bill or withhold his/her assent to the bill or return the bill for reconsideration of the House or Houses of the state legislature. When a bill is so returned, the House or Houses have to reconsider it within a period of six months. The bill is presented again to the presidential assent after it is passed by the House or Houses with or without amendments. It is not mentioned in the Constitution whether it is obligatory on the part of the president to give his/her assent to such a bill or not.

Money Bills

The Constitution lays down a special procedure for the passing of Money Bills in the state legislature. This is as follows:

A Money Bill cannot be introduced in the legislative council. It can be introduced in the legislative assembly only and that too on the recommendation of the governor. Every such bill is considered to be a government bill and can be introduced only by a minister.

After a Money Bill is passed by the legislative assembly, it is transmitted to the legislative council for its consideration. The legislative council has restricted powers with regard to a Money Bill. It cannot reject or amend a Money Bill. It can only make recommendations and must return the bill to the legislative assembly within 14 days. The legislative assembly can either accept or reject all or any of the recommendations of the legislative council.

If the legislative assembly accepts any recommendation, the bill is then deemed to have been passed by both the Houses in the modified form. If the legislative assembly does not accept any recommendation, the bill is then deemed to have been passed by both the Houses in the form originally passed by the legislative assembly without any change.

If the legislative council does not return the bill to the legislative assembly within 14 days, the bill is deemed to have been passed by both Houses at the expiry of the said period in the form originally passed by the legislative assembly. Thus, the legislative assembly has more powers than legislative council with regard to a money bill. At the most, the legislative council can detain or delay a money bill for a period of 14 days.

Finally, when a Money Bill is presented to the governor, he/she may either give his/her assent, withhold his/her assent or reserve the bill for presidential assent but cannot return the bill for reconsideration of the state legislature. Normally, the governor gives his/her assent to a money bill as it is introduced in the state legislature with his/her prior permission.

When a money bill is reserved for consideration of the President, the President may either give his/her assent to the bill or withhold his/her assent to the bill but cannot return the bill for reconsideration of the state legislature.

BILLS RESERVED FOR PRESIDENT'S CONSIDERATION

The Sarkaria Commission on Centre-State Relations (1983–88) classified the State Bills reserved for President's consideration under the Constitution in the following three categories:

1. Bills which must be reserved for President's consideration: In this category, come Bills—
   (i) which so derogate from the powers of the High Court, as to endanger the position which that Court is under the Constitution designed to fill (Article 200);
   (ii) which relate to imposition of taxes on water or electricity in certain cases, and attract the provisions of Article 288; and
   (iii) which fall within Article 360, during a financial emergency.
2. Bills which may be reserved for President's consideration and assent for specific purposes: In this category, the following Bills come—
   (i) To secure immunity from operation of Articles 14 and 19. These are Bills for—
      (a) acquisition of estates, etc. (Article 31A);
      (b) giving effect to certain Directive Principles of State Policy (Article 31C).
   (ii) A Bill relating to a subject enumerated in the Concurrent List, to ensure operation of its provisions despite their repugnancy to a Union law or an existing law, by securing President's assent in terms of Article 254.
   (iii) A bill imposing restrictions on trade and commerce requiring prior Presidential sanction which was not obtained under Article 304.
3. Bills which may not specifically fall under any of the above categories, yet may be reserved by the Governor for President's consideration under Article 200.

LEGISLATIVE PROCEDURE COMPARED

A comparison of the legislature procedure in the Parliament and State Legislature is given in Table 33.1.

Table 33.1 Comparing Legislative Procedure in the Parliament and State Legislature

Parliament	State Legislature
A. With Regard to Ordinary Bills	
1. It can be introduced in either House of the Parliament.	1. It can be introduced in either House of the state legislature.
2. It can be introduced either by a minister or by a private member.	2. It can be introduced either by a minister or by private member.
3. It passes through first reading, second reading and third reading in the originating House.	3. It passes through first reading, second reading and third reading in the originating House.
4. It is deemed to have been passed by the Parliament only when both the Houses have agreed to it, either with or without amendments.	4. It is deemed to have been passed by the state legislature only when both the Houses have agreed to it, either with or without amendments.
5. A deadlock between the two Houses takes place when the second House, after receiving a bill passed by the first House, rejects the bill or proposes amendments that are not acceptable to the first House or does not pass the bill within six months.	5. A deadlock between the two Houses takes place when the legislative council, after receiving a bill passed by the legislative assembly, rejects the bill or proposes amendments that are not acceptable to the legislative assembly or does not pass the bill within three months.

Parliament	State Legislature
6. The Constitution provides for the mechanism of joint sitting of two Houses of the Parliament to resolve a deadlock between them over the passage of a bill.	6. The Constitution does not provide for the mechanism of joint sitting of two Houses of the state legislature to resolve a deadlock between them over the passage of a bill.
7. The Lok Sabha cannot override the Rajya Sabha by passing the bill for the second time and vice versa. A joint sitting is the only way to resolve a deadlock between the two Houses.	7. The legislative assembly can override the legislative council by passing the bill for the second time and not *vice versa*. When a bill is passed by the assembly for the second time and transmitted to the legislative council, if the legislative council rejects the bill again, or proposes amendments that are not acceptable to the legislative assembly, or does not pass the bill within one month, then the bill is deemed to have been passed by both the Houses in the form in which it was passed by the legislative assembly for the second time.
8. The mechanism of joint sitting for resolving a deadlock applies to a bill whether originating in the Lok Sabha or the Rajya Sabha. If a joint sitting is not summoned by the president, the bill ends and becomes dead.	8. The mechanism of passing the bill for the second time to resolve a deadlock applies to a bill originating in the legislative assembly only. When a bill, which has originated in the legislative council and sent to the legislative assembly, is rejected by the latter, the bill ends and becomes dead.
B. With Regard to Money Bills	
1. It can be introduced only in the Lok Sabha and not in the Rajya Sabha.	1. It can be introduced only in the legislative assembly and not in the legislative council.
2. It can be introduced only on the recommendation of the president.	2. It can be introduced only on the recommendation of the governor.
3. It can be introduced only by a minister and not by a private member.	3. It can be introduced only by a minister and not by a private member.
4. It cannot be rejected or amended by the Rajya Sabha. It should be returned to the Lok Sabha within 14 days, either with or without recommendations.	4. It cannot be rejected or amended by the legislative council. It should be returned to the legislative assembly within 14 days, either with or without amendments.
5. The Lok Sabha can either accept or reject all or any of the recommendations of the Rajya Sabha.	5. The legislative assembly can either accept or reject all or any of the recommendations of the legislative council.
6. If the Lok Sabha accepts any recommendation, the bill is then deemed to have been passed by both the Houses in the modified form.	6. If the legislative assembly accepts any recommendation, the bill is then deemed to have been passed by both the Houses in the modified form.
7. If the Lok Sabha does not accept any recommendation, the bill is then deemed to have been passed by both the Houses in the form originally passed by the Lok Sabha without any change.	7. If the legislative assembly does not accept any recommendation, the bill is then deemed to have been passed by both the Houses in the form originally passed by the legislative assembly without any change.
8. If the Rajya Sabha does not return the bill to the Lok Sabha within 14 days, the bill is deemed to have been passed by both the Houses at the expiration of the said period in the form originally passed by the Lok Sabha.	8. If the legislative council does not return the bill to the legislative assembly within 14 days, the bill is deemed to have been passed by both the Houses at the expiration of the said period in the form originally passed by the legislative assembly.
9. The Constitution does not provide for the resolution of any deadlock between the two Houses. This is because, the will of the Lok Sabha is made to prevail over that of the Rajya Sabha, if the latter does not agree to the bill passed by the former.	9. The Constitution does not provide for the resolution of any deadlock between the two Houses. This is because, the will of the legislative assembly is made to prevail over that of legislative council, if the latter does not agree to the bill passed by the former.

POSITION OF LEGISLATIVE COUNCIL

The constitutional position of the council (as compared with the assembly) can be studied from two angles:

A. Spheres where council is equal to assembly.
B. Spheres where council is unequal to assembly.

Equal with Assembly

In the following matters, the powers and status of the council are broadly equal to that of the assembly:

1. Introduction and passage of ordinary bills. However, in case of disagreement between the two Houses, the will of the assembly prevails over that of the council.
2. Approval of ordinances issued by the governor.
3. Selection of ministers including the chief minister. Under the Constitution the, ministers including the chief minister can be members of either House of the state legislature. However, irrespective of their membership, they are responsible only to the assembly.
4. Consideration of the reports of the constitutional bodies like State Finance Commission, state public service commission and Comptroller and Auditor General of India.
5. Enlargement of the jurisdiction of the state public service commission.

Unequal with Assembly

In the following matters, the powers and status of the council are unequal to that of the assembly:

1. A Money Bill can be introduced only in the assembly and not in the council.
2. The council cannot amend or reject a money bill. It should return the bill to the assembly within 14 days, either with recommendations or without recommendations.
3. The assembly can either accept or reject all or any of the recommendation of the council. In both the cases, the money bill is deemed to have been passed by the two Houses.
4. The final power to decide whether a particular bill is a money bill or not is vested in the Speaker of the assembly.
5. The final power of passing an ordinary bill also lies with the assembly. At the most, the council can detain or delay the bill for the period of four months—three months in the first instance and one month in the second instance. In other words, the council is not even a revising body like the Rajya Sabha; it is only a dilatory chamber or an advisory body.
6. The council can only discuss the budget but cannot vote on the demands for grants (which is the exclusive privilege of the assembly).
7. The council cannot remove the council of ministers by passing a no-confidence motion. This is because, the council of ministers is collectively responsible only to the assembly. But, the council can discus and criticise the policies and activities of the Government.
8. When an ordinary bill, which has originated in the council and was sent to the assembly, is rejected by the assembly, the bill ends and becomes dead.
9. The council does not participate in the election of the president of India and representatives of the state in the Rajya Sabha.
10. The council has no effective say in the ratification of a constitutional amendment bill. In this respect also, the will of the assembly prevails over that of the council[9].

[9]The position, in this regard, is very well analysed by J.C. Johari in the following way: 'The Constitution is not clear on this point whether a bill of constitutional amendment referred to the states for ratification by their legislatures shall include the Vidhan Parishad or not. In practice, it may be understood that the will of the Vidhan Sabha has to prevail. In case the Vidhan Parishad concurs with the view of

11. Finally, the very existence of the council depends on the will of the assembly. The council can be abolished by the Parliament on the recommendation of the assembly.

From the above, it is clear that the position of the council *vis-a-vis* the assembly is much weaker than the position of the Rajya Sabha *vis-a-vis* the Lok Sabha. The Rajya Sabha has equal powers with the Lok Sabha in all spheres except financial matters and with regard to the control over the Government. On the other hand, the council is subordinate to the assembly in all respects. Thus, the predominance of the assembly over the council is fully established.

Even though both the council and the Rajya Sabha are second chambers, the Constitution has given the council much lesser importance than the Rajya Sabha due to the following reasons:

1. The Rajya Sabha consists of the representatives of the states and thus reflect the federal element of the polity. It maintains the federal equilibrium by protecting the interests of the states against the undue interference of the Centre. Therefore, it has to be an effective revising body and not just an advisory body or dilatory body like that of the council. On the other hand, the issue of federal significance does not arise in the case of a council.
2. The council is heterogeneously constituted. It represents different interests and consists of differently elected members and also include some nominated members. Its very composition makes its position weak and reduces its utility as an effective revising body. On the other hand, the Rajya Sabha is homogeneously constituted. It represents the states and union territories and consists of mainly elected members (only 12 out of 250 are nominated).
3. The position accorded to the council is in accordance with the principles of democracy. The council should yield to the assembly, which is a popular house. This pattern of relationship between the two Houses of the state legislature is adopted from the British model. In Britain, the House of Lords (Upper House) cannot oppose and obstruct the House of Commons (Lower House). The House of Lords is only a dilatory chamber—it can delay an ordinary bill for a maximum period of one year and a money bill for one month.

Keeping in view its weak, powerless and insignificant position and role, the critics have described the council as a 'secondary chamber', 'costly ornamental luxury', 'white elephant', etc. The critics have opined that the council has served as a refuge for those who are defeated in the assembly elections. It enabled the unpopular, rejected and ambitious politicians to occupy the post of a chief minister or a minister or a member of the state legislature.

Even though the council has been given less powers as compared with the assembly, its utility is supported on the following grounds:

1. It checks the hasty, defective, careless and ill-considered legislation made by the assembly by making provision for revision and thought.
2. It facilitates representation of eminent professionals and experts who cannot face direct elections. The governor nominates one-sixth members of the council to provide representation to such people.

PRIVILEGES OF STATE LEGISLATURE

Privileges of a state legislature are a sum of special rights, immunities and exemptions enjoyed by the Houses of state legislature, their committees and their members. They are necessary in order to secure the independence and effectiveness of their actions.

---

the Vidhan Sabha, it is all right; in case it differs, the Vidhan Sabha may pass it again and thereby ignore the will of the Vidhan Parishad as it can do in case of a non-money bill'. (*Indian Government and Politics*, Vishal, Thirteenth Edition, 2001, p. 441).

Without these privileges, the Houses can neither maintain their authority, dignity and honour nor can protect their members from any obstruction in the discharge of their legislative responsibilities.

The Constitution has also extended the privileges of the state legislature to those persons who are entitled to speak and take part in the proceedings of a House of the state legislature or any of its committees. These include advocate-general of the state and state ministers.

It must be clarified here that the privileges of the state legislature do not extend to the governor who is also an integral part of the state legislature.

The privileges of a state legislature can be classified into two broad categories—those that are enjoyed by each House of the state legislature collectively, and those that are enjoyed by the members individually.

Collective Privileges

The privileges belonging to each House of the state legislature collectively are:

1. It has the right to publish its reports, debates and proceedings and also the right to prohibit others from publishing the same[10].
2. It can exclude strangers from its proceedings and hold secret sittings to discuss some important matters.
3. It can make rules to regulate its own procedure and the conduct of its business and to adjudicate upon such matters.
4. It can punish members as well as outsiders for breach of its privileges or its contempt by reprimand, admonition or imprisonment (also suspension or expulsion, in case of members).
5. It has the right to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member.
6. It can institute inquiries and order the attendance of witnesses and send for relevant papers and records.
7. The courts are prohibited to inquire into the proceedings of a House or its Committees.
8. No person (either a member or outsider) can be arrested, and no legal process (civil or criminal) can be served within the precincts of the House without the permission of the presiding officer.

Individual Privileges

The privileges belonging to the members individually are:

1. They cannot be arrested during the session of the state legislature and 40 days before the beginning and 40 days after the end of such session. This privilege is available only in civil cases and not in criminal cases or preventive detention cases.
2. They have freedom of speech in the state legislature. No member is liable to any proceedings in any court for anything said or any vote given by him/her in the state legislature or its committees. This freedom is subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of the state legislature[11].
3. They are exempted from jury service. They can refuse to give evidence and appear as a witness in a case pending in a court when the state legislature is in session.

[10] The 44th Amendment Act of 1978 restored the freedom of the press to publish true reports of state legislature without its prior permission. But, this is not applicable in the case of a secret sitting of the House.

[11] Article 211 of the Constitution says that no discussion shall take place in the legislature of a state with respect to the conduct of any judge of the Supreme Court or of a high court in the discharge of his/her duties. Under the rules of a House(s) of the state legislature, use of unparliamentary language or unparliamentary conduct of a member is prohibited.

Table 33.2 Strength of Legislative Assemblies and Legislative Councils and seats Reserved for SCs and STs in the Legislative Assemblies

S. No.	Name of the State/Union Territory	Number of Seats in Legislative Assembly	Reserved for the Scheduled Castes	Reserved for the Scheduled Tribes	Number of Seats in Legislative Council
	I. STATES				
1.	Andhra Pradesh	175	29	7	58[12]
2.	Arunachal Pradesh	60	—	59	—
3.	Assam	126	8	16	—
4.	Bihar	243	38	2	75
5.	Chhattisgarh	90	10	29	—
6.	Goa	40	1	—	—
7.	Gujarat	182	13	27	—
8.	Haryana	90	17	—	—
9.	Himachal Pradesh	68	17	3	—
10.	Jharkhand	81	9	28	—
11.	Karnataka	224	36	15	75
12.	Kerala	140	14	2	—
13.	Madhya Pradesh	230	35	47	—
14.	Maharashtra	288	29	25	78
15.	Manipur	60	1	19	—
16.	Meghalaya	60	—	55	—
17.	Mizoram	40	—	38	—
18.	Nagaland	60	—	59	—
19.	Odisha	147	24	33	—
20.	Punjab	117	34	—	—
21.	Rajasthan	200	34	25	—
22.	Sikkim	32	2	12	—
23.	Tamil Nadu	234	44	2	—
24.	Telangana	119	19	12	40
25.	Tripura	60	10	20	—
26.	Uttarakhand	70	13	2	—

(Contd.)

[12]The Andhra Pradesh Reorganisation (Amendment) Act, 2015, increased the number of seats in the Legislative Council of Andhra Pradesh from 50 to 58.

S. No.	Name of the State/Union Territory	Number of Seats in Legislative Assembly	Reserved for the Scheduled Castes	Reserved for the Scheduled Tribes	Number of Seats in Legislative Council
27.	Uttar Pradesh	403	85	—	100
28.	West Bengal	294	68	16	—
	II. UNION TERRITORIES				
1.	NCT of Delhi	70	12	—	—
2.	Puducherry	30	5	—	—
3.	Jammu and Kashmir	83[13]	6	—	—

Table 33.3 Articles Related to State Legislature at a Glance

Article No.	Subject-matter
	General
168.	Constitution of Legislatures in states
169.	Abolition or creation of Legislative Councils in states
170.	Composition of the Legislative Assemblies
171.	Composition of the Legislative Councils
172.	Duration of State Legislatures
173.	Qualification for membership of the State Legislature
174.	Sessions of the State Legislature, prorogation and dissolution
175.	Right of Governor to address and send messages to the House or Houses
176.	Special address by the Governor
177.	Rights of Ministers and Advocate-General as respects the Houses
	Officers of the State Legislature
178.	The Speaker and Deputy Speaker of the Legislative Assembly
179.	Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker
180.	Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker
181.	The Speaker or the Deputy Speaker not to preside while a resolution for his/her removal from office is under consideration
182.	The Chairman and Deputy Chairman of the Legislative Council
183.	Vacation and resignation of, and removal from, the offices of Chairman and Deputy Chairman
184.	Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman

[13]Under the Jammu and Kashmir Reorganisation Act, 2019, the total number of seats fixed for the Legislative Assembly of the Union territory of Jammu and Kashmir is 107. But, 24 seats fall in the Pakistan-occupied-Kashmir (PoK). These seats are vacant and are not to be taken into account for reckoning the total membership of the Assembly.

Article No.	Subject-matter
185.	The Chairman or the Deputy Chairman not to preside while a resolution for his/her removal from office is under consideration
186.	Salaries and allowances of the Speaker and Deputy Speaker and the Chairman and Deputy Chairman
187.	Secretariat of State Legislature
	Conduct of Business
188.	Oath or affirmation by members
189.	Voting in Houses, power of Houses to act notwithstanding vacancies and quorum
	Disqualifications of Members
190.	Vacation of seats
191.	Disqualifications for membership
192.	Decision on questions as to disqualifications of members
193.	Penalty for sitting and voting before making oath or affirmation under Article 188 or when not qualified or when disqualified
	Powers, Privileges and Immunities of State Legislatures and their Members
194.	Powers, privileges, etc., of the House of Legislatures and of the members and committees thereof
195.	Salaries and allowances of members
	Legislative Procedure
196.	Provisions as to introduction and passing of Bills
197.	Restriction on powers of Legislative Council as to Bills other than Money Bills
198.	Special procedure in respect of Money Bills
199.	Definition of "Money Bills"
200.	Assent to Bills
201.	Bills reserved for consideration
	Procedure in Financial Matters
202.	Annual financial statement
203.	Procedure in Legislature with respect to estimates
204.	Appropriation Bills
205.	Supplementary, additional or excess grants
206.	Votes on account, votes of credit and exceptional grants
207.	Special provisions as to financial Bills
	Procedure Generally
208.	Rules of procedure
209.	Regulation by law of procedure in the Legislature of the state in relation to financial business

(Contd.)

Article No.	Subject-matter
210.	Language to be used in the Legislature
211.	Restriction on discussion in the Legislature
212.	Courts not to inquire into proceedings of the Legislature
	Legislative Powers of the Governor
213.	Power of Governor to promulgate Ordinances during recess of Legislature

Table 33.4 Laws Made by the Parliament (under Article 169 of the Constitution) for the abolition or creation of State Legislative Councils

Sl. No.	Acts	Provisions
1.	West Bengal Legislative Council (Abolition) Act, 1969	Provided for the abolition of the Legislative Council of the State of West Bengal.
2.	Punjab Legislative Council (Abolition) Act, 1969	Provided for the abolition of the Legislative Council of the State of Punjab.
3.	Andhra Pradesh Legislative Council (Abolition) Act, 1985	Provided for the abolition of the Legislative Council of the State of Andhra Pradesh.
4.	Tamil Nadu Legislative Council (Abolition) Act, 1986	Provided for the abolition of the Legislative Council of the State of Tamil Nadu.
5.	Andhra Pradesh Legislative Council Act, 2005	Provided for the creation of Legislative Council for the State of Andhra Pradesh.
6.	Tamil Nadu Legislative Council Act, 2010	Provided for the creation of Legislative Council for the State of Tamil Nadu.

CHAPTER 34 High Court

In the Indian single-integrated judicial system, the high court operates below the Supreme Court but above the subordinate courts. The judiciary in a state consists of a high court and a hierarchy of subordinate courts. The high court occupies the top position in the judicial administration of a state.

The institution of high court originated in India in 1862 when the high courts were set up at Calcutta, Bombay and Madras[1]. In 1866, a fourth high court was established at Allahabad. In the course of time, each province in British India came to have its own high court. After 1950, a high court existing in a province became the high court for the corresponding state.

The Constitution of India provides for a high court for each state, but the Seventh Amendment Act of 1956 authorised the Parliament to establish a common high court for two or more states or for two or more states and a union territory. The territorial jurisdiction of a high court is co-terminus with the territory of a state. Similarly, the territorial jurisdiction of a common high court is co-terminus with the territories of the concerned states and union territory.

At present, there are 25 high courts in the country[2]. Out of them, only three high courts have jurisdiction over more than one state. Among the eight union territories, Delhi alone has a separate high court (since 1966). The union territories of Jammu and Kashmir and Ladakh have a common high court. The other union territories fall under the jurisdiction of different state high courts. The Parliament can extend the jurisdiction of a high court to any union territory or exclude the jurisdiction of a high court from any union territory.

The name, year of establishment, territorial jurisdiction and seat (with bench or benches) of all the 25 high courts are mentioned in Table 34.1.

Articles 214 to 231, in Part VI of the Constitution, deal with the organisation, independence, jurisdiction, powers, procedures and so on of the high courts.

COMPOSITION AND APPOINTMENT

Every high court (whether exclusive or common) consists of a chief justice and such other judges as the President may from time to time deem necessary to appoint. Thus, the Constitution does not specify the strength of a high court and leaves it to the discretion of the President. Accordingly, the President determines the strength of a high court from time to time depending upon its workload.

[1]These three high courts were set up under the provisions of the Indian High Courts Act, 1861.

[2]With the creation of three more new states in 2000, the number of high courts increased from 18 to 21. Again, with the creation of separate high courts for the three north-eastern states of Manipur, Meghalaya and Tripura in 2013, the number of high courts increased from 21 to 24. Further, with the establishment of a separate high court for the state of Andhra Pradesh in 2019, the number of high courts increased from 24 to 25.

Appointment of Judges The judges of a high court are appointed by the President. The chief justice is appointed by the President after consultation with the chief justice of India and the governor of the state concerned. For appointment of other judges, the chief justice of the concerned high court is also consulted. In case of a common high court for two or more states, the governors of all the states concerned are consulted by the President.

In the *Second Judges* case[3] (1993), the Supreme Court ruled that no appointment of a judge of the high court can be made, unless it is in conformity with the opinion of the chief justice of India. In the *Third Judges* case[4] (1998), the Supreme Court opined that in case of the appointment of high court judges, the chief justice of India should consult a collegium of two senior-most judges of the Supreme Court. Thus, the sole opinion of the chief justice of India alone does not constitute the 'consultation' process.

The 99th Constitutional Amendment Act of 2014 and the National Judicial Appointments Commission Act of 2014 have replaced the Collegium System of appointing judges to the Supreme Court and High Courts with a new body called the National Judicial Appointments Commission (NJAC). However, in 2015, the Supreme Court has declared both the 99th Constitutional Amendment as well as the NJAC Act as unconstitutional and void. Consequently, the earlier collegium system became operative again. This verdict was delivered by the Supreme Court in the Fourth Judges case[4a] (2015). The Court opined that the new system (i.e., NJAC) would affect the independence of the judiciary.

[3] *Supreme Court Advocates-on-Record Association* vs. *Union of India* (1993).

[4] *In re* Presidential Reference (1998). The President sought the Supreme Court's opinion (under Article 143) on certain doubts over the consultation process to be adopted by the chief justice of India as stipulated in the 1993 case.

[4a] *Supreme Court Advocates-on-Record Association* vs. *Union of India* (2015).

QUALIFICATIONS, OATH AND SALARIES

Qualifications of Judges A person to be appointed as a judge of a high court, should have the following qualifications:

1. He/she should be a citizen of India.
2. (a) He/she should have held a judicial office in the territory of India for ten years; or
   (b) He/she should have been an advocate of a high court (or high courts in succession) for ten years.

From the above, it is clear that the Constitution has not prescribed a minimum age for appointment as a judge of a high court. Moreover, unlike in the case of the Supreme Court, the Consitution makes no provision for the appointment of a distinguished jurist as a judge of a high court.

Oath or Affirmation A person appointed as a judge of a high court, before entering upon his/her office, has to make and subscribe to an oath or affirmation before the governor of the state or some person appointed by him/her for this purpose. In his/her oath, a judge of a high court swears:

1. to bear true faith and allegiance to the Constitution of India;
2. to uphold the sovereignty and integrity of India;
3. to duly and faithfully and to the best of his/her ability, knowledge and judgement perform the duties of the office without fear or favour, affection or ill-will; and
4. to uphold the Constitution and the laws.

Salaries and Allowances The salaries, allowances, privileges, leave and pension of the judges of a high court are determined from time to time by the Parliament. They cannot be varied to their disadvantage after their appointment except during a financial emergency. In 2018, the salary of the chief justice was increased from ₹90,000 to 2.50 lakh per month and that of a judge from ₹80,000

to 2.25 lakh per month[5]. They are also paid sumptuary allowance and provided with free accommodation and other facilities like medical, car, telephone, etc.

The retired chief justice and judges are entitled to 50% of their last drawn salary as monthly pension.

TENURE, REMOVAL AND TRANSFER

Tenure of Judges The Constitution has not fixed the tenure of a judge of a high court. However, it makes the following four provisions in this regard:

1. He/she holds office until he/she attains the age of 62 years[6]. Any questions regarding his/her age is to be decided by the President after consultation with the chief justice of India and the decision of the President is final.
2. He/she can resign his/her office by writing to the President.
3. He/she can be removed from his/her office by the President on the recommendation of the Parliament.
4. He/she vacates his/her office when he/she is appointed as a judge of the Supreme Court or when he/she is transferred to another high court.

Removal of Judges A judge of a high court can be removed from his/her office by an order of the President. The President can issue the removal order only after an address by the Parliament has been presented to him/her in the same session for such removal. The address must be supported by a special majority of each House of Parliament (i.e., a majority of the total membership of that House and majority of not less than two-thirds of the members of that House present and voting). The grounds for removal are two—proved misbehaviour or incapacity. Thus, a judge of a high court can be removed in the same manner and on the same grounds as a judge of the Supreme Court.

The Judges Enquiry Act (1968) regulates the procedure relating to the removal of a judge of a high court by the process of impeachment:

1. A removal motion signed by 100 members (in the case of Lok Sabha) or 50 members (in the case of Rajya Sabha) is to be given to the Speaker/Chairman.
2. The Speaker/Chairman may admit the motion or refuse to admit it.
3. If it is admitted, then the Speaker/Chairman is to constitute a three-member committee to investigate into the charges.
4. The committee should consist of (a) the chief justice or a judge of the Supreme Court, (b) chief justice of a high court, and (c) a distinguished jurist.
5. If the committee finds the judge to be guilty of misbehaviour or suffering from an incapacity, the House can take up the consideration of the motion.
6. After the motion is passed by each House of Parliament by a special majority, an address is presented to the President for removal of the judge.
7. Finally, the President passes an order removing the judge.

From the above, it is clear that the procedure for the impeachment of a judge of a high court is the same as that for a judge of the Supreme Court.

It is interesting to know that no judge of a high court has been impeached so far.

Transfer of Judges The President can transfer a judge from one high court to another after consulting the Chief Justice of India. On transfer, he/she is entitled to receive in addition to his/her salary such compensatory allowance as may be determined by Parliament.

---

[5]In 1950, their salaries were fixed at ₹4,000 per month and ₹3,500 per month respectively. In 1986, their salaries were raised to ₹9,000 per month and ₹8,000 per month respectively. In 1998, their salaries were raised to ₹30,000 per month and ₹26,000 per month respectively. In 2009, their salaries were raised to ₹90,000 per month and ₹80,000 per month respectively.

[6]The retirement age has been raised from 60 to 62 years by the 15th Amendment Act of 1963.

In 1977, the Supreme Court ruled that the transfer of high court judges could be resorted to only as an exceptional measure and only in public interest and not by way of punishment. Again in 1994, the Supreme Court held that judicial review is necessary to check arbitrariness in transfer of judges. But, only the judge who is transferred can challenge it.

In the *Third Judges* case (1998), the Supreme Court opined that in case of the transfer of high court judges, the Chief Justice of India should consult, in addition to the collegium of four seniormost judges of the Supreme Court, the chief justice of the two high courts (one from which the judge is being transferred and the other receiving him/her). Thus, the sole opinion of the chief justice of India does not constitute the 'consultation' process.

ACTING, ADDITIONAL AND RETIRED JUDGES

Acting Chief Justice The President can appoint a judge of a high court as an acting chief justice of the high court when:

1. the office of chief justice of the high court is vacant; or
2. the chief justice of the high court is temporarily absent; or
3. the chief justice of the high court is unable to perform the duties of his/her office.

Additional and Acting Judges The President can appoint duly qualified persons as additional judges of a high court for a temporary period not exceeding two years when:

1. there is a temporary increase in the business of the high court; or
2. there are arrears of work in the high court.

The President can also appoint a duly qualified person as an acting judge of a high court when a judge of that high court (other than the chief justice) is:

1. unable to perform the duties of his/her office due to absence or any other reason; or
2. appointed to act temporarily as chief justice of that high court.

An acting judge holds office until the permanent judge resumes his/her office. However, both the additional or acting judge cannot hold office after attaining the age of 62 years.

Retired Judges At any time, the chief justice of a high court of a state can request a retired judge of that high court or any other high court to act as a judge of the high court of that state for a temporary period. He/she can do so only with the previous consent of the President and also of the person to be so appointed. Such a judge is entitled to such allowances as the President may determine. He/she will also enjoy all the jurisdiction, powers and privileges of a judge of that high court. But, he/she will not otherwise be deemed to be a judge of that high court.

INDEPENDENCE OF HIGH COURT

The independence of a high court is very essential for the effective discharge of the duties assigned to it. It should be free from the encroachments, pressures and interferences of the executive (council of ministers) and the legislature. It should be allowed to do justice without fear or favour.

The Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of a high court.

1. Mode of Appointment The judges of a high court are appointed by the President (which means the cabinet) in consultation with the members of the judiciary itself (i.e., chief justice of India and the chief justice of the high court). This provision curtails the absolute discretion of the executive as well as ensures that the judicial appointments are not based on any political or practical considerations.

2. Security of Tenure The judges of a high court are provided with the security of tenure. They can be removed from office by the President only in the manner and on the grounds mentioned in the Constitution. This means that they do not hold their office during the

pleasure of the President, though they are appointed by him/her. This is obvious from the fact that no judge of a high court has been removed (or impeached) so far.

3. Fixed Service Conditions The salaries, allowances, privileges, leave and pension of the judges of a high court are determined from time to time by the Parliament. But, they cannot be changed to their disadvantage after their appointment except during a financial emergency. Thus, the conditions of service of the judges of a high court remain same during their term of office.

4. Expenses Charged on Consolidated Fund The salaries and allowances of the judges, the salaries, allowances and pensions of the staff as well as the administrative expenses of a high court are charged on the consolidated fund of the state. Thus, they are non-votable by the state legislature (though they can be discussed by it). It should be noted here that the pension of a high court judge is charged on the Consolidated Fund of India and not the state.

5. Conduct of Judges cannot be Discussed The Constitution prohibits any discussion in Parliament or in a state legislature with respect to the conduct of the judges of a high court in the discharge of their duties, except when an impeachment motion is under consideration of the Parliament.

6. Ban on Practice after Retirement The retired permanent judges of a high court are prohibited from pleading or acting in any court or before any authority in India except the Supreme Court and the other high courts. This ensures that they do not favour any one in the hope of future favour.

7. Power to Punish for its Contempt A high court can punish any person for its contempt. Thus, its actions and decisions cannot be criticised and opposed by anybody. This power is vested in a high court to maintain its authority, dignity and honour.

8. Freedom to Appoint its Staff The chief justice of a high court can appoint officers and servants of the high court without any interference from the executive. He/she can also prescribe their conditions of service.

9. Its Jurisdiction cannot be Curtailed The jurisdiction and powers of a high court in so far as they are specified in the Constitution cannot be curtailed both by the Parliament and the state legislature.

JURISDICTION AND POWERS OF HIGH COURT

Like the Supreme Court, the high court has been vested with quite extensive and effective powers. It is the highest court of appeal in the state. It is the protector of the Fundamental Rights of the citizens. It is vested with the power to interpret the Constitution. Besides, it has supervisory and consultative roles.

However, the Constitution does not contain detailed provisions with regard to the jurisdiction and powers of a high court. It only lays down that the jurisdiction and powers of a high court are to be the same as immediately before the commencement of the Constitution. But, there is one addition, that is, the Constitution gives a high court jurisdiction over revenue matters (which it did not enjoy in the pre-constitution era). The Constitution also confers (by other provisions) some more additional powers on a high court like writ jurisdiction, power of superintendence, consultative power, etc.

At present, a high court enjoys the following jurisdiction and powers:

1. Original jurisdiction.
2. Writ jurisdiction.
3. Appellate jurisdiction.
4. Supervisory jurisdiction.
5. Control over subordinate courts.
6. A court of record.
7. Power of judicial review.

The present jurisdiction and powers of a high court are governed by (a) the constitutional provisions, (b) the Letters Patent, (c) the Acts of Parliament, (d) the Acts of State Legislature, (e) Indian Penal Code, 1860, (f) Cirminal Procedure Code, 1973, and (g) Civil Procedure Code, 1908.

1. Original Jurisdiction

It means the power of a high court to hear disputes in the first instance, not by way of appeal. It extends to the following:

(a) Disputes relating to the election of members of Parliament and state legislatures.
(b) Regarding revenue matter or an act ordered or done in revenue collection.
(c) Enforcement of fundamental rights of citizens.
(d) Cases ordered to be transferred from a subordinate court involving the interpretation of the Constitution to its own file.
(e) The four high courts (i.e., Calcutta, Bombay, Madras and Delhi High Courts) have original civil jurisdiction in cases of higher value.

Before 1973, the Calcutta, Bombay and Madras High Courts also had original criminal jurisdiction. But, this was fully abolished by the Criminal Procedure Code, 1973.

2. Writ Jurisdiction

Article 226 of the Constitution empowers a high court to issue writs including *habeas corpus, mandamus, certiorari*, prohibition and *quo warranto* for the enforcement of the fundamental rights of the citizens and for any other purpose. The phrase 'for any other purpose' refers to the enforcement of an ordinary legal right. The high court can issue writs to any person, authority and government not only within its territorial jurisdiction but also outside its territorial jurisdiction if the cause of action arises within its territorial jurisdiction[7].

The writ jurisdiction of the high court (under Article 226) is not exclusive but concurrent with the writ jurisdiction of the Supreme Court (under Article 32). It means, when the fundamental rights of a citizen are violated, the aggrieved party has the option of moving either the high court or the Supreme Court directly. However, the writ jurisdiction of the high court is wider than that of the Supreme Court. This is because, the Supreme Court can issue writs only for the enforcement of fundamental rights and not for any other purpose, that is, it does not extend to a case where the breach of an ordinary legal right is alleged.

In the *Chandra Kumar* case[8] (1997), the Supreme Court ruled that the writ jurisdiction of both the high court and the Supreme Court constitute a part of the basic structure of the Constitution. Hence, it cannot be ousted or excluded even by way of an amendment to the Constitution.

3. Appellate Jurisdiction

A high court is primarily a court of appeal. It hears appeals against the judgements of subordinate courts functioning in its territorial jurisdiction. It has appellate jurisdiction in both civil and criminal matters. Hence, the appellate jurisdiction of a high court is wider than its original jurisdiction.

(a) Civil Matters The civil appellate jurisdiction of a high court is as follows:

(i) First appeals from the orders and judgements of the district courts, additional district courts and other subordinate courts lie directly to the high court, on both questions of law and fact, if the amount exceeds the stipulated limit.
(ii) Second appeals from the orders and judgements of the district court or other subordinate courts lie to the high court in the cases involving questions of law only (and not questions of fact).
(iii) Some High Courts have provision for intra-court appeals. When a single judge of the high court has decided a case (either under the original or appellate jurisdiction of the high court), an appeal from such a decision lies to the division bench of the same high court.
(iv) Appeals from the decisions of the administrative and other tribunals lie to the division bench of the state high court. In 1997, the Supreme Court ruled

[7]The second provision was added by the 15th Constitutional Amendment Act of 1963.

[8]*L. Chandra Kumar* vs. *Union of India* (1997).

that the tribunals are subject to the writ jurisdiction of the high courts. Consequently, it is not possible for an aggrieved person to approach the Supreme Court directly against the decisions of the tribunals, without first going to the high courts.

(b) Criminal Matters The criminal appellate jurisdiction of a high court is as follows:

(i) Appeals from the judgements of sessions court and additional sessions court lie to the high court if the sentence is one of imprisonment for more than seven years. It should also be noted here that a death sentence (popularly known as capital punishment) awarded by a sessions court or an additional sessions court should be confirmed by the high court before it can be executed, whether there is an appeal by the convicted person or not.

(ii) In some cases specified in various provisions of the Criminal Procedure Code (1973), the appeals from the judgements of the assistant sessions judge, metropolitan magistrate or other magistrates (judicial) lie to the high court.

4. Supervisory Jurisdiction

A high court has the power of superintendence over all courts and tribunals functioning in its territorial jurisdiction (except military courts or tribunals). Thus, it may—

(a) call for returns from them;

(b) make and issue, general rules and prescribe forms for regulating the practice and proceedings of them;

(c) prescribe forms in which books, entries and accounts are to be kept by them; and

(d) settle the fees payable to the sheriff, clerks, officers and legal practitioners of them.

This power of superintendence of a high court is very broad because, (i) it extends to all courts and tribunals whether they are subject to the appellate jurisdiction of the high court or not; (ii) it covers not only administrative superintendence but also judicial superintendence; (iii) it is a revisional jurisdiction; and (iv) it can be *suo-motu* (on its own) and not necessarily on the application of a party.

However, this power does not vest the high court with any unlimited authority over the subordinate courts and tribunals. It is an extraordinary power and hence has to be used most sparingly and only in appropriate cases. Usually, it is limited to, (i) excess of jurisdiction, (ii) gross violation of natural justice, (iii) error of law, (iv) disregard to the law of superior courts, (v) perverse findings, and (vi) manifest injustice.

5. Control over Subordinate Courts

In addition to its appellate jurisdiction and supervisory jurisdiction over the subordinate courts as mentioned above, a high court has an administrative control and other powers over them. These include the following:

(a) It is consulted by the governor in the matters of appointment, posting and promotion of district judges and in the appointments of persons to the judicial service of the state (other than district judges).

(b) It deals with the matters of posting, promotion, grant of leave, transfers and discipline of the members of the judicial service of the state (other than district judges).

(c) It can withdraw a case pending in a subordinate court if it involves a substantial question of law that require the interpretation of the Constitution. It can then either dispose of the case itself or determine the question of law and return the case to the subordinate court with its judgement.

(d) Its law is binding on all subordinate courts functioning within its territorial jurisdiction in the same sense as the law declared by the Supreme Court is binding on all courts in India.

6. A Court of Record

As a court of record, a high court has two powers:

(a) The judgements, proceedings and acts of the high courts are recorded for perpetual memory and testimony. These records are admitted to be of evidentiary value and cannot be questioned when produced before any subordinate court. They are recognised as legal precedents and legal references.

(b) It has power to punish for contempt of itself.

The expression 'contempt of court' has not been defined by the Constitution. However, the expression has been defined by the Contempt of Courts Act of 1971. Under this, contempt of court may be civil or criminal.

According to this Act, a High Court has power to punish for contempt of not only itself but also contempt of subordinate courts. However, no High Court shall take cognizance of a contempt alleged to have been committed in respect of a subordinate court, where such contempt is an offence punishable under the Indian Penal Code, 1860.

As a court of record, a high court also has the power to review and correct its own judgement or order or decision, even though no specific power of review is conferred on it by the Constitution. The Supreme Court, on the other hand, has been specifically conferred with the power of review by the constitution.

7. Power of Judicial Review

Judicial review is the power of a high court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments. On examination, if they are found to be violative of the Constitution (*ultra-vires*), they can be declared as illegal, unconstitutional and invalid (null and void) by the high court. Consequently, they cannot be enforced by the government.

Though the phrase 'judicial review' has no where been used in the Constitution, the provisions of Articles 13 and 226 explicitly confer the power of judicial review on a high court. The constitutional validity of a legislative enactment or an executive order can be challenged in a high court on the following three grounds:

(a) it infringes the fundamental rights (Part III),

(b) it is outside the competence of the authority which has framed it, and

(c) it is repugnant to the constitutional provisions.

The 42nd Amendment Act of 1976 curtailed the judicial review power of high court. It debarred the high courts from considering the constitutional validity of any central law. However, the 43rd Amendment Act of 1977 restored the original position.

Table 34.1 Name and Jurisdiction of High Courts

	Name	Year of establishment	Territorial Jurisdiction	Seat
1.	Allahabad	1866	Uttar Pradesh	Prayagraj (Allahabad) (Bench at Lucknow)
2.	Andhra Pradesh	2019	Andhra Pradesh	Amaravati
3.	Bombay[9]	1862	Maharashtra, Goa and Dadra and Nagar Haveli and Daman and Diu	Mumbai (Benches at Nagpur, Panaji and Aurangabad)
4.	Calcutta[9]	1862	West Bengal and Andaman and Nicobar Islands	Kolkata (Circuit Benches at Port Blair and Jalpaiguri)

[9]Though the names of Bombay, Calcutta and Madras are changed to Mumbai, Kolkata and Chennai respectively, the names of respective high courts are not changed.

	Name	Year of establishment	Territorial Jurisdiction	Seat
5.	Chhattisgarh	2000	Chhattisgarh	Bilaspur
6.	Delhi	1966	NCT of Delhi	New Delhi
7.	Gauhati	1948[10]	Assam, Nagaland, Mizoram and Arunachal Pradesh	Gauhati (Benches at Kohima, Aizawl and Itanagar)
8.	Gujarat	1960	Gujarat	Ahmedabad
9.	Himachal Pradesh	1971	Himachal Pradesh	Shimla
10.	Jammu and Kashmir & Ladakh[11]	1928	Jammu and Kashmir & Ladakh	Srinagar and Jammu
11.	Jharkhand	2000	Jharkhand	Ranchi
12.	Karnataka	1884[12]	Karnataka	Bengaluru (Benches at Dharwad and Gulbarga)
13.	Kerala	1956	Kerala and Lakshadweep	Ernakulam
14.	Madhya Pradesh	1956	Madhya Pradesh	Jabalpur (Benches at Gwalior and Indore)
15.	Madras[9]	1862	Tamil Nadu and Puducherry	Chennai (Bench at Madurai)
16.	Manipur	2013	Manipur	Imphal
17.	Meghalaya	2013	Meghalaya	Shillong
18.	Orissa[13]	1948	Odisha	Cuttack
19.	Patna	1916	Bihar	Patna
20.	Punjab and Haryana[14]	1947	Punjab, Haryana and Chandigarh	Chandigarh
21.	Rajasthan	1949	Rajasthan	Jodhpur (Bench at Jaipur)
22.	Sikkim	1975	Sikkim	Gangtok
23.	Telangana[15]	1954	Telangana	Hyderabad
24.	Tripura	2013	Tripura	Agartala
25.	Uttarakhand	2000	Uttarakhand	Nainital

[10]Originally known as Assam High Court and renamed Gauhati High Court in 1971.

[11]Originally known as the High Court of Jammu and Kashmir and renamed as the High Court of Jammu and Kashmir & Ladakh in 2021.

[12]Originally known as Mysore High Court and renamed Karnataka High Court in 1973.

[13]Though the name of Orissa is changed to Odisha, the name of Orissa High Court is not changed.

[14]Originally known as Punjab High Court and renamed Punjab and Haryana High Court in 1966.

[15]Originally known as Andhra Pradesh High Court (established in 1954). In 2014, it was renamed as the "High Court of Judicature at Hyderabad" and was made a common high court for the states of Andhra Pradesh and Telangana. Again, with the establishment of a separate high court for the state of Andhra Pradesh in 2019, it became the high court for the state of Telangana.

Table 34.2 Articles Related to High Courts at a Glance

Article No.	Subject Matter
214.	High Courts for states
215.	High Courts to be courts of record
216.	Constitution of High Courts
217.	Appointment and conditions of the office of a Judge of a High Court
218.	Application of certain provisions relating to Supreme Court to High Courts
219.	Oath or affirmation by judges of High Courts
220.	Restriction on practice after being a permanent judge
221.	Salaries etc., of judges
222.	Transfer of a judge from one High Court to another
223.	Appointment of acting Chief Justice
224.	Appointment of additional and acting judges
224A.	Appointment of retired judges at sittings of High Courts
225.	Jurisdiction of existing High Courts
226.	Power of High Courts to issue certain writs
226A.	Constitutional validity of Central laws not to be considered in proceedings under Article 226 (Repealed)
227.	Power of superintendence over all courts by the High Court
228.	Transfer of certain cases to High Court
228A.	Special provisions as to disposal of questions relating to constitutional validity of state laws (Repealed)
229.	Officers and servants and the expenses of High Courts
230.	Extension of jurisdiction of High Courts to union territories
231.	Establishment of a common High Court for two or more states
232.	Interpretation (Repealed)

CHAPTER 35 Subordinate Courts

The state judiciary consists of a high court and a hierarchy of subordinate courts, also known as lower courts. The subordinate courts are so-called because of their subordination to the state high court. They function below and under the high court at district and lower levels.

CONSTITUTIONAL PROVISIONS

Articles 233 to 237 in Part VI of the Constitution make the following provisions to regulate the organisation of subordinate courts and to ensure their independence from the executive[1].

1. Appointment of District Judges The appointment, posting and promotion of district judges in a state are made by the governor of the state in consultation with the high court.

A person to be appointed as a district judge should have the following qualifications:

(a) He/she should not already be in the service of the Central or the state government.
(b) He/she should have been an advocate or a pleader for seven years.
(c) He/she should be recommended by the high court for appointment.

2. Appointment of other Judges Appointment of persons (other than district judges) to the judicial service of a state are made by the governor of the state after consultation with the State Public Service Commission and the high court[2].

3. Control over Subordinate Courts The control over district courts and other subordinate courts including the posting, promotion and leave of persons belonging to the judicial service of a state and holding any post inferior to the post of district judge is vested in the high court.

4. Interpretation The expression 'district judge' includes the judges of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge.

The expression 'judicial service' means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of a district judge.

5. Application of the above Provisions to Certain Magistrates The Governor may direct that the above-mentioned provisions relating to persons in the state judicial service would apply to any class or classes of magistrates in the state.

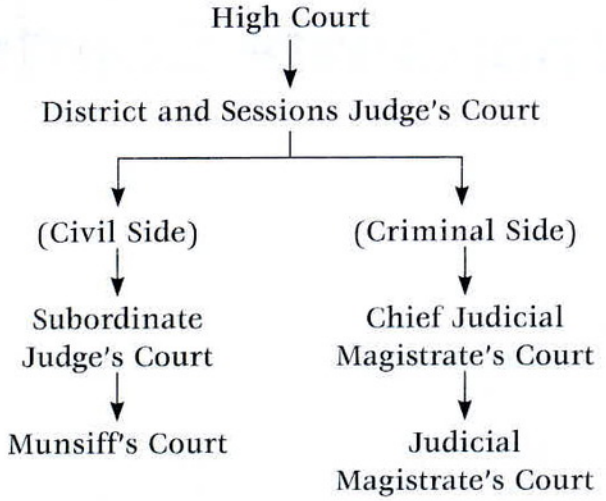
STRUCTURE AND JURISDICTION

The organisational structure, jurisdiction and nomenclature of the subordinate judiciary are laid down by the states. Hence, they differ

[1]The 20th Constitutional Amendment Act of 1966 added a new Article 233-A which retrospectively validated the appointment of certain district judges as well as the judgements delivered by them.

[2]In practice, the State Public Service Commission conducts a competitive examination for recruitment to the judicial service of the state.

slightly from state to state. Broadly speaking, there are three tiers of civil and criminal courts below the High Court. This is shown as follows:



The district judge is the highest judicial authority in the district. He/she possesses original and appellate jurisdiction in both civil as well as criminal matters. In other words, the district judge is also the sessions judge. When he/she deals with civil cases, he/she is known as the district judge and when he/she hears the criminal cases, he/she is called as the sessions judge. The district judge exercises both judicial and administrative powers. He/she also has supervisory powers over all the subordinate courts in the district. Appeals against his/her orders and judgements lie to the High Court. The sessions judge has the power to impose any sentence including life imprisonment and capital punishment (death sentence). However, a capital punishment passed by him/her is subject to confirmation by the High Court, whether there is an appeal or not.

Below the District and Sessions Court stands the Court of Subordinate Judges on the civil side and the Court of Chief Judicial Magistrates on the criminal side. The subordinate judge exercises unlimited pecuniary jurisdiction over civil suits[3]. The chief judicial magistrate decides criminal cases which are punishable with imprisonment for a term of up to seven years.

At the lowest level, on the civil side, is the Court of Munsiff and on the criminal side, is the Court of Judicial Magistrate. The munsiff possesses limited jurisdiction and decides civil cases of small pecuniary stake[4]. The judicial magistrate tries criminal cases which are punishable with imprisonment for a term of up to three years.

In some metropolitan cities, there are city civil courts (chief judges) on the civil side and the courts of metropolitan magistrates on the criminal side.

Some of the States and Presidency towns have established small causes courts[5]. These courts decide the civil cases of small value in a summary manner. Their decisions are final, but the High Court possesses the power of revision.

In some states, Panchayat Courts try petty civil and criminal cases. They are variously known as Nyaya Panchayat, Gram Kutchery, Adalati Panchayat, Panchayat Adalat and so on.

[3]A subordinate judge is also known as civil judge (senior division), civil judge (class I) and so on. He/she may also be given the powers of an assistant sessions judge. In such a case, he/she combines in himself/herself both civil as well as criminal powers like that of a District Judge.

[4]A munsiff is also known as civil judge (junior division), civil judge (class-II) and so on.

[5]Delhi, Bombay, Calcutta and Madras were formerly called presidency towns.

Table 35.1 Articles Related to Subordinate Courts at a Glance

Article No.	Subject-matter
233.	Appointment of district judges
233A.	Validation of appointments of, and judgements, etc., delivered by certain district judges
234.	Recruitment of persons other than district judges to the judicial service
235.	Control over subordinate courts
236.	Interpretation
237.	Application of the provisions of this Chapter to certain class or classes of Magistrates

CHAPTER 36 Tribunals

The original Constitution did not contain provisions with respect to tribunals. The 42nd Amendment Act of 1976 added a new Part XIV-A to the Constitution. This part is entitled as 'Tribunals' and consists of only two Articles—Article 323A dealing with administrative tribunals and Article 323B dealing with tribunals for other matters.

ADMINISTRATIVE TRIBUNALS

Article 323A empowers the Parliament to provide for the establishment of administrative tribunals for the adjudication of disputes relating to recruitment and conditions of service of persons appointed to public services of the Centre, the states, local bodies, public corporations and other public authorities. In other words, Article 323A enables the Parliament to take out the adjudication of disputes relating to service matters from the civil courts and the high courts and place it before the administrative tribunals.

In pursuance of Article 323A, the Parliament has passed the Administrative Tribunals Act in 1985. The act authorises the Central government to establish one Central administrative tribunal and the state administrative tribunals. This act opened a new chapter in the sphere of providing speedy and inexpensive justice to the aggrieved public servants.

Central Administrative Tribunal (CAT)

The Central Administrative Tribunal (CAT) was set up in 1985 with the principal bench at New Delhi and additional benches in different states. At present, it has 19 regular benches, 17 of which operate at the principal seats of high courts and the remaining two at Jaipur and Lucknow. These benches also hold circuit sittings at other seats of high courts.

The name and jurisdiction of Benches of CAT are given in Table 36.1. Similarly, the details of circuit sittings of Benches of CAT are given in Table 36.2.

The CAT exercises original jurisdiction in relation to recruitment and all service matters of public servants covered by it. Its jurisdiction extends to the All-India Services, the Central civil services, civil posts under the Centre and civilian employees of defence services. However, the members of the defence forces, officers and servants of the Supreme Court and the secretarial staff of the Parliament are not covered by it.

The CAT is a multi-member body consisting of a Chairman and Members. Originally, the CAT consisted of a Chairman, Vice-Chairman and Members. Later, in 2006, the provision for the Vice-Chairman was removed by the Administrative Tribunals (Amendment) Act, 2006. Hence, there is now no Vice-Chairman in the CAT. At present, the sanctioned strength of the Chairman is one and sanctioned strength of the Members is 69. They are drawn from both judicial and administrative streams. But, a person who has not completed the age of 50 years is not eligible for appointment as a Chairman or Member. They hold office for a term of four years or until they attain the age of 70 years in case of Chairman and 67 years in case of Members, whichever is earlier.[1]

[1] As per the Tribunals Reforms Act, 2021.

The appointment of Chairman and Members in the CAT is made by the central government on the basis of recommendations of a search-cum-selection committee chaired by the Chief Justice of India or a Judge of Supreme Court, who is nominated by the Chief Justice of India.

The CAT is not bound by the procedure laid down in the Civil Procedure Code of 1908. It is guided by the principles of natural justice. These principles keep the CAT flexible in approach. Only a nominal fee of ₹50 is to be paid by the applicant. The applicant may appear either in person or through a lawyer.

Originally, appeals against the orders of the CAT could be made only in the Supreme Court and not in the high courts. However, in the *Chandra Kumar* case[2] (1997), the Supreme Court declared this restriction on the jurisdiction of the high courts as unconstitutional, holding that judicial review is a part of the basic structure of the Constitution. It laid down that appeals against the orders of the CAT shall lie before the division bench of the concerned high court. Consequently, now it is not possible for an aggrieved public servant to approach the Supreme Court directly against an order of the CAT, without first going to the concerned high court.

State Administrative Tribunals

The Administrative Tribunals Act of 1985 empowers the Central government to establish the State Administrative Tribunals (SATs) on specific request of the concerned state governments.

Like the CAT, the SATs exercise original jurisdiction in relation to recruitment and all service matters of state government employees. The chairman and members of the SATs are appointed by the central government on the recommendations of a search-cum-selection committee shared by the Chief Justice of the High Court of the concerned state.

The act also makes a provision for setting up of joint administrative tribunal (JAT) for two or more states. A JAT exercises all the jurisdiction and powers exercisable by the administrative tribunals for such states.

TRIBUNALS FOR OTHER MATTERS

Under Article 323B, the Parliament and the state legislatures are authorised to provide for the establishment of tribunals for the adjudication of disputes relating to the following matters:

(a) Taxation
(b) Foreign exchange, import and export
(c) Industrial and labour
(d) Land reforms
(e) Ceiling on urban property
(f) Elections to Parliament and state legislatures
(g) Food stuffs
(h) Rent and tenancy rights[3]

Articles 323A and 323B differ in the following three aspects:

1. While Article 323A contemplates establishment of tribunals for public service matters only, Article 323B contemplates establishment of tribunals for certain other matters (mentioned above).
2. While tribunals under Article 323A can be established only by Parliament, tribunals under Article 323B can be established both by Parliament and state legislatures with respect to matters falling within their legislative competence.
3. Under Article 323A, only one tribunal for the Centre and one for each state or two or more states may be established. There is no question of hierarchy of tribunals, whereas under Article 323B a hierarchy of tribunals may be created.

In the *Chandra Kumar* case[4] (1997), the Supreme Court declared those provisions of these two articles which excluded the jurisdiction of the high courts and the Supreme Court as unconstitutional. Hence, the judicial remedies are now available against the orders of these tribunals.

---

[2] *L. Chandra Kumar* vs. *Union of India* (1997). Clause 2(d) of Article 323A was declared as unconstitutional.

[3] Added by the 75th Amendment Act of 1993.

[4] *L. Chandra Kumar* vs. *Union of India* (1997). Clause 2(d) of Article 323A and Clause 3(d) of Article 323B were declared as unconstitutional.

Table 36.1 Name and Jurisdiction of Benches of the CAT

Sl. No.	Bench	Territorial Jurisdiction of the Bench
1.	Principal Bench, New Delhi	NCT of Delhi
2.	Allahabad Bench	Uttar Pradesh (except the districts covered by the Lucknow Bench) and Uttarakhand
3.	Lucknow Bench	Uttar Pradesh (except the districts covered by the Allahabad Bench)
4.	Cuttack Bench	Odisha
5.	Hyderabad Bench	Andhra Pradesh and Telangana
6.	Bangalore Bench	Karnataka
7.	Madras Bench	Tamil Nadu and Puducherry
8.	Ernakulam Bench	Kerala and Lakshadweep
9.	Bombay Bench	Maharashtra, Goa and Dadra and Nagar Haveli and Daman and Diu
10.	Ahmedabad Bench	Gujarat
11.	Jodhpur Bench	Rajasthan (except the districts covered by the Jaipur Bench)
12.	Jaipur Bench	Rajasthan (except the districts covered by the Jodhpur Bench)
13.	Chandigarh Bench	Haryana, Himachal Pradesh, Punjab and Chandigarh
14.	Jabalpur Bench	Madhya Pradesh and Chhattisgarh
15.	Patna Bench	Bihar and Jharkhand
16.	Calcutta Bench	West Bengal, Sikkim and Andaman and Nicobar Islands
17.	Guwahati Bench	Assam, Meghalaya, Manipur, Tripura, Nagaland, Mizoram and Arunachal Pradesh
18.	Jammu Bench	Jammu and Kashmir (except the districts covered by the Srinagar Bench) and Leh district of Ladakh.
19.	Srinagar Bench	Jammu and Kashmir (except the districts covered by the Jammu Bench) and Kargil district of Ladakh.

Table 36.2 Circuit Sittings of Benches of CAT

Sl. No.	Bench	Circuit Sittings held at
1.	Allahabad Bench	Nainital
2.	Calcutta Bench	Port Blair, Gangtok
3.	Chandigarh Bench	Shimla
4.	Madras Bench	Puducherry

(Contd.)

Sl. No.	Bench	Circuit Sittings held at
5.	Guwahati Bench	Shillong, Itanagar, Kohima, Agartala, Imphal, Aizwal
6.	Jabalpur Bench	Indore, Gwalior, Bilaspur
7.	Bombay Bench	Nagpur, Aurangabad, Panaji
8.	Patna Bench	Ranchi
9.	Ernakulam Bench	Lakshadweep

Table 36.3 Articles Related to Tribunals at a Glance

Article No.	Subject-matter
323A.	Administrative tribunals
323B.	Tribunals for other matters

CHAPTER 37 Consumer Commissions

The Consumer Protection Act, 2019 has repealed and replaced the earlier Consumer Protection Act, 1986. Like the old Act, the new Act also provides for the establishment of a three-tier consumer dispute redressal machinery at the District, State and National levels. These are called as the District Consumer Disputes Redressal Commission, the State Consumer Disputes Redressal Commission, and the National Consumer Disputes Redressal Commission. In brief, they are known as the District Commission, the State Commission, and the National Commission respectively.

The three-level hierarchy of the consumer commissions provides an alternative dispute resolution mechanism exclusively for consumers. These are quasi-judicial bodies. They are also popularly known as consumer forums or consumer courts.

The District Commission is established in each district of the state by the state government. However, the state government may also establish more than one District Commission in a district.

The State Commission is established in the state by the state government. It shall ordinarily function at the state capital and perform its functions at such other places as the state government may notify. This is done by the state government in consultation with the State Commission. Further, the state government may also establish regional branches of the State Commission.

The National Commission is established by the central government. It shall ordinarily function at the national capital region and perform its functions at such other places as the central government may notify. This is done by the central government in consultation with the National Commission. Further, the central government may also establish regional branches of the National Commission.

At present, there are 678 District Commissions and 35 State Commissions with the National Commission at the apex. The National Commission was constituted in 1988[1].

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

1. Composition

The National Commission shall consist of a President and not less than four or not more than such number of members as may be prescribed. Accordingly, in 2020, the central government has prescribed that the National Commission shall consist of a President and not less than four or not more than eleven members. Further, out of these eleven members, at least one member shall be a woman[2].

The central government may make rules to provide for qualifications, appointment, salaries and allowances, resignation, removal and other conditions of service of the President and members of the National Commission.

[1]This information is adopted from the official website of the National Consumer Disputes Redressal Commission.

[2]As per the Consumer Protection (Consumer Disputes Redressal Commissions) Rules, 2020.

The President and members of the National Commission are appointed by the central government on the recommendations of a search-cum-selection committee chaired by the Chief Justice of India or a Judge of Supreme Court, who is nominated by the Chief Justice of India. But, a person who has not completed the age of 50 years is not eligible for appointment as a President or member. They hold office for a term of 4 years or until they attain the age of 70 years in case of President and 67 years in case of members, whichever is earlier[2a].

Neither the salary and allowances nor the other terms and conditions of service of the President or any other member of the National Commission shall be varied to his disadvantage after his appointment.

2. Jurisdiction

The National Commission has the pecuniary jurisdiction, the appellate jurisdiction and the revisional jurisdiction. These are explained below:

1. **Pecuniary Jurisdiction:** The National Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration exceeds rupees ten crores. But the central government may prescribe such other values as it deems fit. Accordingly, in 2021, this limit was reduced to above rupees two crores[3].
2. **Appellate Jurisdiction:** The National Commission shall have jurisdiction to entertain appeals against the orders of any State Commission. The appeal may be made within 30 days from the date of the order of the State Commission. But the National Commission may entertain an appeal filed after the expiry of 30 days if it is satisfied that there was sufficient cause for not filing the appeal within the given time.

Further, the National Commission shall also have jurisdiction to entertain appeals against the orders of the Central Consumer Protection Authority (CCPA). The appeal may be made within 30 days from the date of receipt of the order of the CCPA.

3. **Revisional Jurisdiction:** The National Commission shall have jurisdiction to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission in the following circumstances:
   - (i) If the State Commission has exercised a jurisdiction not vested in it by law, or
   - (ii) If the State Commission has failed to exercise a jurisdiction so vested, or
   - (iii) If the State Commission has acted in the exercise of its jurisdiction illegally or with material irregularity.

3. Other Powers

In addition to the above jurisdiction, the National Commission has the following other powers:

1. The National Commission may declare any terms of contract, which is unfair to any consumer, to be null and void.
2. The National Commission shall have the power to review any of the orders passed by it if there is an error apparent on the face of the record. This can be done by the Commission either of its motion or on an application made by any of the parties within 30 days of such order.
3. Where an order is passed by the National Commission ex-parte, the aggrieved party may make an application to the Commission for setting aside such order.
4. The National Commission may transfer any complaint pending before the

[2a] As per the Tribunals Reforms Act, 2021.

[3] As per the Consumer Protection (Jurisdiction of the District Commission, the State Commission, and the National Commission) Rules, 2021.

District Commission of one state to a District Commission of another state or before one State Commission to another State Commission. This can be done by the Commission either on the application of the complainant or of its own motion.

An appeal against the order of the National Commission lies with the Supreme Court. The appeal can be made within 30 days from the date of the order of the National Commission. However, the Supreme Court may entertain an appeal filed after the expiry of 30 days if it is satisfied that there was sufficient cause for not filing the appeal within the given time.

4. Administrative Control

The National Commission shall have administrative control over all the State Commissions in the following matters:

1. Monitoring the performance of the State Commissions in terms of their disposal of cases. This includes calling for periodical returns regarding the institution, disposal, and pendency of cases.
2. Investigating any allegations against the President and members of a State Commission and submitting inquiry reports to the concerned state government.
3. Issuance of instructions regarding the following matters:
   - (i) Adoption of uniform procedures in the hearing of matters
   - (ii) Prior service of copies of documents produced by one party to the opposite parties
   - (iii) Furnishing of English translation of judgements written in any language
   - (iv) Speedy grant of copies of documents
4. Overseeing the functioning of the State Commission or the District Commission either by way of inspection or by any other methods to ensure that the objectives of this Act are best served without interfering with their quasi-judicial freedom.

STATE CONSUMER DISPUTES REDRESSAL COMMISSION

1. Composition

Each State Commission shall consist of a President and not less than four or not more than such number of members as may be prescribed, in consultation with the central government.

The central government may make rules to provide for the qualifications for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the President and members of the State Commission.

The state government may make rules to provide for salaries and allowances and other terms and conditions of service of the President and members of the State Commission.

2. Jurisdiction

The State Commission has the pecuniary jurisdiction, the appellate jurisdiction and the revisional jurisdiction. These are explained below:

1. **Pecuniary Jurisdiction:** The State Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration, exceeds rupees one crore but does not exceed rupees ten crores. But the central government may prescribe such other values as it deems fit. Accordingly, in 2021, this limit was reduced to above rupees fifty lakhs but up to rupees two crores[4].
2. **Appellate Jurisdiction:** The State Commission shall have jurisdiction to entertain appeals against the orders of any District Commission within the state. The appeal may be made within 45 days from the date of the order of the District Commission. But the State

[4] *Ibid.*

Commission may entertain an appeal filed after the expiry of 45 days if it is satisfied that there was sufficient cause for not filing the appeal within the given time.

3. **Revisional Jurisdiction:** The State Commission shall have jurisdiction to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Commission within the state in the following circumstances:
   - (i) If the District Commission has exercised a jurisdiction not vested in it by law, or
   - (ii) If the District Commission has failed to exercise a jurisdiction so vested, or
   - (iii) If the District Commission has acted in exercise of its jurisdiction illegally or with material irregularity.

3. Other Powers

In addition to the above jurisdiction, the State Commission has the following other powers:

1. The State Commission may declare any terms of contract, which is unfair to any consumer, to be null and void.
2. The State Commission shall have the power to review any of the order passed by it if there is an error apparent on the face of the record. This can be done by the commission either of its own motion or on an application made by any of the parties within 30 days of such order.
3. The State Commission may transfer any complaint pending before a District Commission to another District Commission within the state. This can be done by the commission either on the application of the complainant or of its own motion.
4. The State Commission shall have administrative control over all the District Commissions within its jurisdiction.

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION

1. Composition

Each District Commission shall consist of a President and not less than two or not more than such number of members as may be prescribed, in consultation with the central government.

The central government may make rules to provide for the qualifications for appointment, method of recruitment, procedure for appointment, term of office, resignation and removal of the President and members of the District Commission.

The state government may make rules to provide for salaries and allowances and other terms and conditions of service of the President and members of the District Commission.

If there is a vacancy in the office of the President or member of a District Commission, then the state government may direct –

- (a) any other specified District Commission to exercise the jurisdiction in respect of that district also; or
- (b) the President or a member of any other specified District Commission to exercise the power and discharge the functions of the President or member of that District Commission also.

2. Jurisdiction

The District Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration does not exceed rupees one crore. But the central government may prescribe such other value as it deems fit. Accordingly, in 2021, this limit was reduced to up to rupees fifty lakhs[5].

The District Commission shall ordinarily function in the district headquarters. It may also perform its functions at such other place

[5] *Ibid.*

in the district, as the state government may notify. This is done by the state government in consultation with the State Commission.

The District Commission shall have the power to review any of the order passed by it if there is an error apparent on the face of the record. This can be done by the Commission either of its own motion or on an application made by any of the parties within 30 days of such order.

The pecuniary jurisdiction of the District Commission, the State Commission and the National Commission is mentioned in Table 37.1:

Table 37.1 Pecuniary Jurisdiction of the Consumer Commissions

Sl. No.	Name	Under 2021 Rules	Under 2019 Act	Under 1986 Act
1.	District Commission	Up to Rs. 50 lakhs	Up to Rs. 1 crore	Up to Rs. 20 lakhs
2.	State Commission	Above Rs. 50 lakhs but up to Rs. 2 crores	Above Rs. 1 crore but up to Rs. 10 crores	Above Rs. 20 lakhs but up to Rs. 1 crore
3.	National Commission	Above Rs. 2 crores	Above Rs. 10 crores	Above Rs. 1 crore

CHAPTER 38 Lok Adalats and Other Courts

NATIONAL LEGAL SERVICES AUTHORITY[1]

Article 39A of the Constitution of India provides for free legal aid to the poor and weaker sections of the society and ensures justice for all. Further, Articles 14 and 22(1) of the Constitution also make it obligatory for the State to ensure equality before law and a legal system which promotes justice on the basis of equal opportunity to all. In the year 1987, the Legal Services Authorities Act was enacted by the Parliament which came into force on 9th November, 1995 to establish a nationwide uniform network for providing free and competent legal services to the weaker sections of the society on the basis of equal opportunity. The National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities Act, 1987 to monitor and evaluate implementation of legal aid programmes and to lay down policies and principles for making legal services available under the Act.

In every State, a State Legal Services Authority and in every High Court, a High Court Legal Services Committee have been constituted. The District Legal Services Authorities, Taluk Legal Services Committees have been constituted in the Districts and most of the Taluks to give effect to the policies and directions of the NALSA and to provide free legal services to the people and conduct Lok Adalats in the State.

[1]This information is adopted from the website of the Department of Justice, Ministry of Law and Justice, Government of India.

The Supreme Court Legal Services Committee has been constituted to administer and implement the legal services programme insofar as it relates to the Supreme Court of India.

The NALSA lays down policies, principles, guidelines and frames effective and economical schemes for the State Legal Services Authorities to implement the Legal Services Programmes throughout the country.

Primarily, the State Legal Services Authorities, District Legal Services Authorities, Taluk Legal Services Committees, etc. have been asked to discharge the following main functions on regular basis:

1. To provide free and competent legal services to the eligible persons.
2. To organise Lok Adalats for amicable settlement of disputes.
3. To organise legal awareness camps in the rural areas.

The free legal services include:

(a) Payment of court fee, process fees and all other charges payable or incurred in connection with any legal proceedings.
(b) Providing service of lawyers in legal proceedings.
(c) Obtaining and supply of certified copies of orders and other documents in legal proceedings.
(d) Preparation of appeal, paper book including printing and translation of documents in legal proceedings.

The persons eligible for getting free legal services include:

(i) Women and children
(ii) Members of SC/ST
(iii) Industrial workmen

(iv) Victims of mass disaster, violence, flood, drought, earthquake, industrial disaster
(v) Disabled persons
(vi) Persons in custody
(vii) Persons whose annual income does not exceed ₹1 lakh (in the Supreme Court Legal Services Committee, the limit is ₹5,00,000/-)
(viii) Victims of trafficking in human beings or beggar.

LOK ADALATS

The Lok Adalat is a forum where the cases (or disputes) which are pending in a court or which are at pre-litigation stage (not yet brought before a court) are compromised or settled in an amicable manner.

Meaning

The Supreme Court has explained the meaning of the institution of Lok Adalat in the following way[2]:

The 'Lok Adalat' is an old form of adjudicating system prevailed in ancient India and it's validity has not been taken away even in the modern days. The word 'Lok Adalat' means 'People's Court'. This system is based on Gandhian principles. It is one of the components of the ADR (Alternative Dispute Resolution) system. As the Indian courts are overburdened with the backlog of cases and the regular courts are to decide the cases involving a lengthy, expensive and tedious procedure. The court takes years together to settle even petty cases. The Lok Adalat, therefore, provides alternative resolution or devise for expeditious and inexpensive justice.

In Lok Adalat proceedings, there are no victors and vanquished and, thus, no rancour.

The experiment of 'Lok Adalat' as an alternate mode of dispute settlement has come to be accepted in India, as a viable, economic, efficient and informal one.

[2]*P.T. Thomas* vs. *Thomas Job* (2005).

The Lok Adalat is another alternative in judicial justice. This is a recent strategy for delivering informal, cheap and expeditious justice to the common man by way of settling disputes, which are pending in courts and also those, which have not yet reached courts by negotiation, conciliation and by adopting persuasive, common sense and human approach to the problems of the disputants, with the assistance of specially trained and experienced members of a team of conciliators.

Features

The first Lok Adalat camp in the post-independence era was organised in Gujarat in 1982. This initiative proved very successful in the settlement of disputes. Consequently, the institution of Lok Adalat started spreading to other parts of the country. At that time, this institution was functioning as a voluntary and conciliatory agency without any statutory backing for its decisions. In view of its growing popularity, there arose a demand for providing a statutory backing to this institution and the awards given by Lok Adalats. Hence, the institution of Lok Adalat has been given statutory status under the Legal Services Authorities Act, 1987.

The Act makes the following provisions relating to the organisation and functioning of the Lok Adalats:

1. The State Legal Services Authority or the District Legal Services Authority or the Supreme Court Legal Services Committee or the High Court Legal Services Committee or the Taluk Legal Services Committee may organise Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.
2. Every Lok Adalat organised for an area shall consist of such number of serving or retired judicial officers and other persons of the area as may be specified by the agency organizing such Lok Adalat. Generally, a Lok Adalat consists of a judicial officer as the chairman and a

lawyer (advocate) and a social worker as members.

3. A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of:
   (i) any case pending before any court; or
   (ii) any matter which is falling within the jurisdiction of any court and is not brought before such court.

   Thus, the Lok Adalat can deal with not only the cases pending before a court but also with the disputes at pre-litigation stage.

   But, the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law. In other words, the offences which are non-compoundable under any law fall outside the purview of the Lok Adalat.
4. Any case pending before the court can be referred to the Lok Adalat for settlement if:
   (i) the parties thereof agree to settle the dispute in the Lok Adalat; or
   (ii) one of the parties thereof makes an application to the court, for referring the case to the Lok Adalat; or
   (iii) the court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat.

   In the case of a pre-litigation dispute, the matter can be referred to the Lok Adalat for settlement by the agency organizing the Lok Adalat, on receipt of an application from any one of the parties to the dispute.
5. The Lok Adalat shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure (1908), while trying a suit in respect of the following matters:
   (a) the summoning and enforcing the attendance of any witness examining him/her on oath;
   (b) the discovery and production of any document;
   (c) the reception of evidence on affidavits;
   (d) the requisitioning of any public record or document from any court or office; and
   (e) such other matters as may be prescribed.

   Further, a Lok Adalat shall have the requisite powers to specify its own procedure for the determination of any dispute coming before it. Also, all proceedings before a Lok Adalat shall be deemed to be judicial proceedings within the meaning of the Indian Penal Code (1860) and every Lok Adalat shall be deemed to be a Civil Court for the purpose of the Code of Criminal Procedure (1973).
6. An award of a Lok Adalat shall be deemed to be a decree of a Civil Court or an order of any other court. Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute. No appeal shall lie to any court against the award of the Lok Adalat.

Types

There are three types of Lok Adalats viz., National Lok Adalats, State Lok Adalats and Permanent Lok Adalats (Public Utility Services). The various cases settled in National Lok Adalats and State Lok Adalats include pre-litigation and pending matters related to Negotiable Instruments Act, bank recovery cases, labour dispute cases, service matters, criminal compoundable matters, MACT, etc[2a].

These three types of Lok Adalats are explained below[2b]:

1. **National Lok Adalats:** The National Level Lok Adalats are held at regular intervals where on a single day Lok Adalats are held throughout the country, in all the

[2a] Annual Report 2020-2021, National Legal Services Authority, p. 37.

[2b] This information is obtained from the official website of the National Legal Services Authority.

courts right from the Supreme Court till the Taluk Levels wherein cases are disposed off in huge numbers. From 2015, National Lok Adalats are being held on a specific subject matter every month.

2. **State Lok Adalats:** These are also known as Regular Lok Adalats. These can be further classified into the following types:
   (a) **Continuous Lok Adalat:** A Lok Adalat bench sits continuously for a set number of days to facilitate settlements by deferring unsettled matters to the next date and encouraging parties to reflect on the terms of the mutually accepted settlement before actual settlement.
   (b) **Daily Lok Adalat:** This type of Lok Adalat is organised on daily basis.
   (c) **Mobile Lok Adalat:** These are organised by taking the Lok Adalat set up in a Multi-utility van to different areas for resolving petty cases and also spreading legal awareness in the area.
   (d) **Mega Lok Adalat:** This is organised in the State on a single day in all courts of the State.
3. **Permanent Lok Adalats:** These are explained below in detail.

Benefits

According to the Supreme Court, the benefits under Lok Adalat are as follows[3]:

1. There is no court fee and if court fee is already paid the amount will be refunded if the dispute is settled at Lok Adalat.
2. The basic features of Lok Adalat are the procedural flexibility and speedy trial of the disputes. There is no strict application of procedural laws like the Civil Procedure Code and the Evidence Act while assessing the claim by Lok Adalat.
3. The parties to the dispute can directly interact with the judge through their counsel which is not possible in regular courts of law.
4. The award by the Lok Adalat is binding on the parties and it has the status of a decree of a civil court and it is non-appealable, which does not cause the delay in the settlement of disputes finally.

In view of above facilities provided by the Act, Lok Adalats are boon to the litigating public as they can get their disputes settled fast and free of cost amicably.

The Law Commission of India summarized the advantages of the ADR (Alternative Dispute Resolution) in the following way[4]:

1. It is less expensive.
2. It is less time-consuming.
3. It is free from technicalities vis-à-vis conducting of cases in law courts.
4. Parties are free to discuss their differences of opinion without any fear of disclosure before any law courts.
5. Parties have the feeling that there is no losing or winning side between them but at the same time their grievance is redressed and their relationship is restored.

PERMANENT LOK ADALATS

The Legal Services Authorities Act, 1987 was amended in 2002 to provide for the establishment of the Permanent Lok Adalats to deal with cases pertaining to the public utility services.

The salient features of the new institution of Permanent Lok Adalats are as follows:

1. The Permanent Lok Adalat shall consist of a Chairman who is or has been a district judge or additional district judge or has held judicial office higher in rank than that of the district judge and two other persons having adequate experience in public utility services.
2. The Permanent Lok Adalat shall exercise jurisdiction in respect of one or more public utility services such as transport services of passengers or goods by air, road and water; postal, telegraph or

[3] *P.T. Thomas* vs. *Thomas Job* (2005).

[4] Law Commission of India, Report No.222 entitled as "Need for Justice-dispensation through ADR etc.," April 2009, pp. 22–23.

telephone services; supply of power, light or water to the public by any establishment; public conservancy or sanitation; services in hospitals or dispensaries; and insurance services.

3. The pecuniary jurisdiction of the Permanent Lok Adalat shall be up to rupees ten lakhs. However, the Central Government may increase the said pecuniary jurisdiction from time to time. Accordingly, in 2015, the Central Government has increased the said pecuniary jurisdiction upto Rs. One Crore.
4. The Permanent Lok Adalat shall have not jurisdiction in respect of any matter relating to an offence not compoundable under any law.
5. Before the dispute is brought before any court, any party to the dispute may make an application to the Permanent Lok Adalat for settlement of the dispute. After an application is made to the Permanent Lok Adalat, no party to that application shall invoke jurisdiction of any court in the same dispute.
6. Where it appears to the Permanent Lok Adalat that there exist elements of a settlement, which may be acceptable to the parties, it shall formulate the terms of a possible settlement and submit them to the parties for their observations and in case the parties reach an agreement, the Permanent Lok Adalat shall pass an award in terms thereof. In case parties to the dispute fail to reach an agreement, the Permanent Lok Adalat shall decide the dispute on merits.
7. Every award made by the Permanent Lok Adalat shall be final and binding on all the parties thereto and shall be by a majority of the persons constituting the Permanent Lok Adalat.

FAMILY COURTS

The Family Courts Act, 1984 was enacted to provide for the establishment of Family Courts with a view to promote conciliation and secure speedy settlement of disputes relating to marriage and family affairs.

Reasons

While introducing the Family Courts Bill in the Parliament, the Government of India gave the following reasons for the establishment of separate Family Courts:

1. Several associations of women, other organizations and individuals have urged, from time to time, that Family Courts, be set up for the settlement of family disputes, where emphasis should be laid on conciliation and achieving socially desirable results and adherence to rigid rules of procedure and evidence should be eliminated.
2. The Law Commission in its 59th report (1974) had also stressed that in dealing with disputes concerning the family the Court ought to adopt an approach radically different from the adopted in ordinary civil proceedings and that it should make reasonable efforts at settlement before the commencement of the trial. The Code of Civil Procedure was amended in 1976 to provide for a special procedure to be adopted in suits or proceedings relating to matters concerning the family.
3. However, not much use has been made by the Courts in adopting this conciliatory procedure and the Courts continue to deal with family disputes in the same manner as other civil matters and the same adversary approach prevails. The need was, therefore, felt, in the public interest, to establish Family Courts for speedy settlement of family disputes.

Therefore, the main objectives and reasons for setting up of Family Courts are:[5]

(i) To create a Specialized Court which will exclusively deal with family matters so

[5]This information is adopted from the website of the Department of Justice, Ministry of Law and Justice, Government of India.

that such a court may have the necessary expertise to deal with these cases expeditiously. Thus expertise and expeditious disposal are two main factors for establishing such a court;

(ii) To institute a mechanism for conciliation of the disputes relating to family;

(iii) To provide an inexpensive remedy; and

(iv) To have flexibility and an informal atmosphere in the conduct of proceedings.

Features

The salient features of the Family Courts Act, 1984 are as follows:

1. It provides for the establishment of Family Courts by the State Governments in consultation with the High Courts.
2. It makes it obligatory on the State Governments to set up a Family Court in every city or town with a population exceeding one million.
3. It enables the State Governments to set up Family Courts in other areas also, if they deem it necessary.
4. It exclusively provides within the jurisdiction of the Family Courts the matters relating to:
   (i) matrimonial relief, including nullity of marriage, judicial separation, divorce, restitution of conjugal rights, or declaration as to the validity of marriage or as to the matrimonial status of any person;
   (ii) the property of the spouses or of either of them;
   (iii) declaration as to the legitimacy of any person;
   (iv) guardianship of a person or the custody of any minor; and
   (v) maintenance of wife, children and parents.
5. It makes it obligatory on the part of the Family Court to endeavour, in the first instance to effect a reconciliation or a settlement between the parties to a family dispute. During this stage, the proceedings will be informal and rigid rules of procedure shall not apply.
6. It provides for the association of social welfare agencies, counsellors, etc., during conciliation stage and also to secure the service of medical and welfare experts.
7. It provides that the parties to a dispute before a Family Court shall not be entitled, as of right, to be represented by legal practitioner. However, the Court may, in the interest of justice, seek assistance of a legal expert as *amicus curiae*.
8. It simplifies the rules of evidence and procedure so as to enable a Family Court to deal effectively with a dispute.
9. It provides for only one right of appeal which shall lie to the High Court.

GRAM NYAYALAYAS

The Gram Nyayalayas Act, 2008 has been enacted to provide for the establishment of the Gram Nyayalayas at the grass roots level for the purposes of providing access to justice to the citizens at their doorsteps and to ensure that opportunities for securing justice are not denied to any citizen due to social, economic or other disabilities.

Reasons

While introducing the Gram Nyayalayas Bill in the Parliament, the Government of India gave the following reasons for the establishment of Gram Nyayalayas:

1. Access to justice by the poor and disadvantaged remains a worldwide problem despite diverse approaches and strategies that have been formulated and implemented to address it. In our country, Article 39A of the Constitution directs the State to secure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.
2. In the recent past, the Government has taken various measures to strengthen judicial system, *inter alia*, by simplifying

the procedural laws; incorporating various alternative dispute resolution mechanisms such as arbitration, conciliation and mediation; conducting of Lok Adalats, etc. These measures are required to be strengthened further.

3. The Law Commission of India in its 114th Report on Gram Nyayalaya suggested establishment of Gram Nyayalayas so that speedy, inexpensive and substantial justice could be provided to the common man. The Gram Nyayalayas Act, 2008 is broadly based on the recommendations of the Law Commission.
4. Justice to the poor at their door step is a dream of the poor. Setting up of Gram Nyayalayas in the rural areas would bring to the people of rural areas speedy, affordable and substantial justice.

Features

The salient features of the Gram Nyayalayas Act are as follows[6]:

1. The Gram Nyayalaya shall be court of Judicial Magistrate of the first class and its presiding officer (Nyayadhikari) shall be appointed by the State Government in consultation with the High Court.
2. The Gram Nyayalaya shall be established for every Panchayat at intermediate level or a group of contiguous Panchayats at intermediate level in a district or where there is no Panchayat at intermediate level in any State, for a group of contiguous Panchayats.
3. The Nyayadhikaris who will preside over these Gram Nyayalayas are strictly judicial officers and will be drawing the same salary, deriving the same powers as First Class Magistrates working under High Courts.
4. The Gram Nyayalaya shall be a mobile court and shall exercise the powers of both Criminal and Civil Courts.
5. The seat of the Gram Nyayalaya will be located at the headquarters of the intermediate Panchayat, they will go to villages, work there and dispose of the cases.
6. The Gram Nyayalaya shall try criminal cases, civil suits, claims or disputes which are specified in the First Schedule and the Second Schedule to the Act.
7. The Central as well as the State Governments have been given power to amend the First Schedule and the Second Schedule of the Act, as per their respective legislative competence.
8. The Gram Nyayalaya shall follow summary procedure in criminal trial.
9. The Gram Nyayalaya shall exercise the powers of a Civil Court with certain modifications and shall follow the special procedure as provided in the Act.
10. The Gram Nyayalaya shall try to settle the disputes as far as possible by bringing about conciliation between the parties and for this purpose, it shall make use of the conciliators to be appointed for this purpose.
11. The judgement and order passed by the Gram Nyayalaya shall be deemed to be a decree and to avoid delay in its execution, the Gram Nyayalaya shall follow summary procedure for its execution.
12. The Gram Nyayalaya shall not be bound by the rules of evidence provided in the Indian Evidence Act, 1872 but shall be guided by the principles of natural justice and subject to any rule made by the High Court.
13. Appeal in criminal cases shall lie to the Court of Session, which shall be heard and disposed of within a period of six months from the date of filing of such appeal.
14. Appeal in civil cases shall lie to the District Court, which shall be heard and disposed of within a period of six months from the date of filing of the appeal.
15. A person accused of an offence may file an application for plea bargaining.

[6]Press Information Bureau, Government of India, September 29, 2009.

Establishment

Under of the Gram Nyayalayas Act, 2008, it is for the State Governments to establish Gram Nyayalayas in consultation with the respective High Courts. However, the Act does not make the setting-up of the Gram Nyayalayas mandatory.

Majority of States have now set up regular courts at Taluka level. Further, reluctance of police officials and other State functionaries to invoke jurisdiction of Gram Nyayalayas, lukewarm response of the Bar, non-availability of notaries and stamp vendors, problem of concurrent jurisdiction of regular courts are other issues indicated by the States which are coming in the way of operationalization of the Gram Nyayalayas.

The issues affecting operationalization of the Gram Nyayalayas were discussed in the Conference of Chief Justices of High Courts and Chief Ministers of the States in April, 2013. It was decided in the Conference that the State Government and High Court should decide the question of establishment of Gram Nyayalayas wherever feasible, taking into account their local problems. The focus is on setting up Gram Nayayalayas in the Talukas where regular courts have not been set up.

COMMERCIAL COURTS

The Commercial Courts Act, 2015 was enacted for the constitution of Commercial Courts, Commercial Appellate Courts, Commercial Division and Commercial Appellate Division in the High Courts for adjudicating commercial disputes of specified value. Under the Act, the 'commercial dispute' is defined broadly to mean dispute arising out of ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents; joint venture and partnership agreements; intellectual property rights; insurance and other areas.

Reasons

While introducing the Commercial Courts Bill, 2015, in the Parliament, the Central Government gave the following reasons for establishing the Commercial Courts:

1. The proposal to provide for speedy disposal of high value commercial disputes has been under consideration of the Government for quite some time. The high value commercial disputes involve complex facts and question of law. Therefore, there is a need to provide for an independent mechanism for their early resolution. The early resolution of commercial disputes shall create a positive image to the investor world about the independent and responsive Indian legal system.
2. The Law Commission of India, in its 253rd Report, has recommended for the establishment of the Commercial Courts, the Commercial Division and the Commercial Appellate Divisions in the High Courts for disposal of commercial disputes of specified value.
3. Based on the above recommendations of the Law Commission, the said Bill was introduced in the Parliament. As provided in the said Bill, all the suits, appeals or applications related to commercial disputes of specified value are to be dealt with by the Commercial Courts or the Commercial Division of the High Courts.
4. The proposed Bill shall accelerate economic growth, improve the international image of the Indian Justice delivery system, and the faith of the investor world in the legal culture of the nation.

Features

The salient features of the Act are as follows:

1. The State Government may constitute Commercial Courts at District level for the purpose of exercising the jurisdiction over the commercial disputes of a specified value. But, the State Government may, with respect to High Courts having ordinary original civil jurisdiction, constitute Commercial Courts at the District Judge level.

2. The State Government may, except the territories over which the High Courts have ordinary original civil jurisdiction, designate Commercial Appellate Courts at District judge level to exercise the appellate jurisdiction over the commercial courts below the district judge level.
3. In all High Courts having ordinary original civil jurisdiction, the Chief Justice of the High Court may constitute Commercial Division for the purpose of exercising the jurisdiction over the commercial disputes of a specified value filed in the High Court.
4. The Chief Justice of the concerned High Court shall constitute Commercial Appellate Division to hear the appeals against the orders of the Commercial Courts at the District judge level and the orders of the Commercial Division of that High Court.
5. The specified value of commercial disputes shall not be less than 3 lakh rupees or such higher value which may be notified by the Central Government. In 2018, the specified value of commercial disputes was reduced from the earlier 1 crore rupees to 3 lakh rupees.
6. A provision is made for compulsory mediation before institution of a suit which does not contemplate any urgent interim relief. In this regard, the Pre-Institution Mediation and Settlement Mechanism is introduced. Further, the Central Government may empower the Authorities constituted under the Legal Services Authorities Act, 1987, for the purposes of pre-institution mediation.

PART V Local Government

In this Part...

CHAPTER 39 Panchayati Raj

The term *Panchayati Raj* in India signifies the system of rural local self-government. It has been established in all the states of India by the Acts of the state legislatures to build democracy at the grass root level. It is entrusted with rural development. It was constitutionalised through the 73rd Constitutional Amendment Act of 1992.

In the scheme of division of powers between the Centre and the states in the Indian federal system, the item of 'local Government' is given to the states. Thus, the fifth entry of the State List of the Seventh Schedule to the Constitution of India deals with 'local government'.

EVOLUTION OF PANCHAYATI RAJ

Balwantrai Mehta Committee

In January 1957, the Government of India appointed a committee to examine the working of the Community Development Programme (1952) and the National Extension Service (1953) and to suggest measures for their better working. The chairman of this committee was Balwantrai G Mehta. The committee submitted its report in November 1957 and recommended the establishment of the scheme of 'democratic decentralisation', which ultimately came to be known as Panchayati Raj. The specific recommendations made by it are:

1. Establishment of a three-tier panchayati raj system—gram panchayat at the village level, panchayat samiti at the block level and zila parishad at the district level. These tiers should be organically linked through a device of indirect elections.
2. The village panchayat should be constituted with directly elected representatives, whereas the panchayat samiti and zila parishad should be constituted with indirectly elected members.
3. All planning and development activities should be entrusted to these bodies.
4. The panchayat samiti should be the executive body while the zila parishad should be the advisory, coordinating and supervisory body.
5. The district collector should be the chairman of the zila parishad.
6. There should be a genuine transfer of power and responsibility to these democratic bodies.
7. Adequate resources should be transferred to these bodies to enable them to discharge their functions and fulfil their responsibilities.
8. A system should be evolved to effect further devolution of authority in future.

These recommendations of the committee were accepted by the National Development

Council in January 1958. The council did not insist on a single rigid pattern and left it to the states to evolve their own patterns suitable to local conditions. But the basic principles and broad fundamentals should be identical throughout the country.

Rajasthan was the first state to establish Panchayati Raj. The scheme was inaugurated by the prime minister on October 2, 1959, in Nagaur district. Rajasthan was followed by Andhra Pradesh, which also adopted the system in 1959. Thereafter, most of the states adopted the system.

Though most of the states created Panchayati Raj institutions by the mid 1960s, there were differences from one state to another with regard to the number of tiers, relative position of samiti and parishad, their tenure, composition, functions, finances and so on. For example, Rajasthan adopted the three-tier system while Tamil Nadu adopted the two-tier system. West Bengal, on the other hand, adopted the four-tier system. Further, in the Rajasthan–Andhra Pradesh pattern, panchayat samiti was powerful as the block was the unit of planning and development, while in Maharashtra–Gujarat pattern, zila parishad was powerful as the district was the unit of planning and development. Some states also established nyaya panchayats, that is, judicial panchayats to try petty civil and criminal cases.

Study Teams and Committees

Since 1960, many study teams, committees and working groups have been appointed to examine the various aspects of functioning of Panchayati Raj system. They are mentioned in Table 39.1.

Table 39.1 Study Teams and Committees on Panchayati Raj

Sl. No.	Year	Name of the study Team / Committee	Chairman
1.	1960	Committee on Rationalisation of Panchayat Statistics	V.R. Rao
2.	1961	Working Group on Panchayats and Cooperatives	S.D. Mishra
3.	1961	Study Team on Panchayati Raj Administration	V. Iswaran
4.	1962	Study Team on Nyaya Panchayats	G.R. Rajgopal
5.	1963	Study Team on the Position of Gram Sabha in Panchayati Raj Movement	R.R. Diwakar
6.	1963	Study Group on Budgeting and Accounting Procedure of Panchayati Raj Institutions	M. Rama Krishnayya
7.	1963	Study Team on Panchayati Raj Finances	K. Santhanam
8.	1965	Committee on Panchayati Raj Elections	K. Santhanam
9.	1965	Study Team on the Audit and Accounts of Panchayati Raj Bodies	R.K. Khanna
10.	1966	Committee on Panchayati Raj Training Centres	G. Ramachandran
11.	1969	Study Team on Involvement of Community Development Agency and Panchayati Raj Institutions in the Implementation of Basic Land Reform Measures	V. Ramanathan
12.	1972	Working Group for Formulation of Fifth Five Year Plan on Community Development and Panchayati Raj	N. Ramakrishnayya
13.	1976	Committee on Community Development and Panchayati Raj	Smt. Daya Choubey

Ashok Mehta Committee

In December 1977, the Janata Government appointed a committee on panchayati raj institutions under the chairmanship of Ashok Mehta. It submitted its report in August 1978 and made 132 recommendations to revive and strengthen the declining panchayati raj system in the country. Its main recommendations were:

1. The three-tier system of panchayati raj should be replaced by the two-tier system, that is, zila parishad at the district level, and below it, the mandal panchayat consisting of a group of villages with a total population of 15,000 to 20,000.
2. A district should be the first point for decentralisation under popular supervision below the state level.
3. Zila parishad should be the executive body and made responsible for planning at the district level.
4. There should be an official participation of political parties at all levels of panchayat elections.
5. The panchayati raj institutions should have compulsory powers of taxation to mobilise their own financial resources.
6. There should be a regular social audit by a district level agency and by a committee of legislators to check whether the funds allotted for the vulnerable social and economic groups are actually spent on them.
7. The state government should not supersede the panchayati raj institutions. In case of an imperative supersession, elections should be held within six months from the date of supersession.
8. The nyaya panchayats should be kept as separate bodies from that of development panchayats. They should be presided over by a qualified judge.
9. The chief electoral officer of a state in consultation with the chief election commissioner should organise and conduct the panchayati raj elections.
10. Development functions should be transferred to the zila parishad and all development staff should work under its control and supervision.
11. The voluntary agencies should play an important role in mobilising the support of the people for panchayati raj.
12. A minister for panchayati raj should be appointed in the state council of ministers to look after the affairs of the panchayati raj institutions.
13. Seats for SCs and STs should be reserved on the basis of their population.
14. A constitutional recognition should be accorded to the Panchayati Raj institutions. This would give them the requisite status (sanctity and stature) and an assurance of continuous functioning.

Due to the collapse of the Janata Government before the completion of its term, no action could be taken on the recommendations of the Ashok Mehta Committee at the central level. However, the three states of Karnataka, West Bengal and Andhra Pradesh took steps to revitalise the panchayati raj, keeping in view some of the recommendations of the Ashok Mehta Committee.

G.V.K. Rao Committee

The Committee to review the existing Administrative Arrangements for Rural Development and Poverty Alleviation Programmes under the chairmanship of G.V.K. Rao was appointed by the erstwhile Planning Commission in 1985. The Committee came to the conclusion that the developmental process was gradually bureaucratised and divorced from the Panchayati Raj. This phenomena of bureaucratisation of development administration as against the democratisation weakened the Panchayati Raj institutions resulting in what is aptly called as 'grass without roots'. Hence, the Committee made the following recommendations to strengthen and revitalise the Panchayati Raj system:

(i) The district level body, that is, the Zila Parishad should be of pivotal importance

in the scheme of democratic decentralisation. It stated that "the district is the proper unit for planning and development and the Zila Parishad should become the principal body for management of all development programmes which can be handled at that level."

(ii) The Panchayati Raj institutions at the district and lower levels should be assigned an important role with respect to planning, implementation and monitoring of rural development programmes.

(iii) Some of the planning functions at the state level should be transferred to the district level planning units for effective decentralized district planning.

(iv) A post of District Development Commissioner should be created. He/she should act as the chief executive officer of the Zila Parishad and should be in charge of all the development departments at the district level.

(v) Elections to the Panchayati Raj institutions should be held regularly. It found that elections became overdue for one or more tiers in 11 states.

Thus the committee, in its scheme of decentralised system of field administration, assigned a leading role to the Panchayati Raj in local planning and development. It is in this respect that the recommendations of the G.V.K. Rao Committee Report (1986) differed from those of the Dantwala Committee Report on Block-Level Planning (1978) and the Hanumantha Rao Committee Report on District Planning (1984). Both the committees have suggested that the basic decentralised planning function should be done at the district level. The Hanumantha Rao Committee advocated separate district planning bodies under either the District Collector or a minister. In both the models, the Collector should play a significant role in the decentralised planning though the Committee stated that Panchayati Raj institutions would also be associated with this process (of decentralised planning). The committee recommended that the Collector should be the coordinator, at the district level, of all developmental and planning activities. Thus, the Hanumantha Rao Committee differed in this respect from those of the Balwantrai Mehta Committee, the First Administrative Reforms Commission of India, the Ashok Mehta Committee and finally the G.V.K. Rao Committee which recommended reduction in the developmental role of the District Collector and which assigned a major role to the Panchayati Raj in development administration.

L M Singhvi Committee

In 1986, Rajiv Gandhi government appointed a committee to prepare a concept paper on 'Revitalisation of Panchayati Raj Institutions for Democracy and Development' under the chairmanship of L.M. Singhvi. It made the following recommendations.

(i) The Panchayati Raj institutions should be constitutionally recognised, protected and preserved. For this purpose, a new chapter should be added in the Constitution of India. This will make their identity and integrity reasonably and substantially inviolate. It also suggested constitutional provisions to ensure regular, free and fair elections to the Panchayati Raj bodies.

(ii) Nyaya Panchayats should be established for a cluster of villages.

(iii) The villages should be reorganised to make Gram Panchayats more viable. It also emphasised the importance of the Gram Sabha and called it as the embodiment of direct democracy.

(iv) The Village Panchayats should have more financial resources.

(v) The judicial tribunals should be established in each state to adjudicate controversies about election to the Panchayati Raj institutions, their dissolution and other matters related to their functioning.

Thungon Committee

In 1988, a sub-committee of the Consultative Committee of Parliament was constituted under the chairmanship of P.K. Thungon to examine the political and administrative structure in the district for the purpose of district

planning. This committee suggested for the strengthening of the Panchayati Raj system. It made the following recommendations:

1. The Panchayati Raj bodies should be constitutionally recognized.
2. A three-tier system of Panchayati Raj with panchayats at the village, block and district levels.
3. Zilla Parishad should be the pivot of the Panchayati Raj system. It should act as the planning and development agency in the district.
4. The Panchayati Raj bodies should have a fixed tenure of five years.
5. The maximum period of super session of a body should be six months.
6. A planning and co-ordination committee should be set-up at the state level under the chairmanship of the minister for planning. The presidents of Zilla Parishads should be its members.
7. A detailed list of subjects for Panchayati Raj should be prepared and incorporated in the Constitution.
8. Reservation of seats in all the three-tiers should be on the basis of population. There should also be reservation for women.
9. A state finance commission should be set-up in each state. It would lay down the criteria and guidelines for the devolution of finances to the Panchayati Raj institutions.
10. The district collector should be the chief executive officer of the Zilla Parishad.

Gadgil Committee

The Committee on Policy and Programmes was constituted in 1988 by the Congress party under the chairmanship of V.N. Gadgil. This committee was asked to consider the question of "how best Panchayati Raj institutions could be made effective". In this context, the committee made the following recommendations:

1. A constitutional status should be bestowed on the Panchayati Raj institutions.
2. A three-tier system of Panchayati Raj with panchayats at the village, block and district levels.
3. The term of Panchayati Raj institutions should be fixed at five years.
4. The members of the Panchayats at all the three levels should be directly elected.
5. Reservation for SCs, STs and women.
6. The Panchayati Raj bodies should have the responsibility of preparation and implementation of plans for socio-economic development. For this purpose, a list of subjects should be specified in the constitution.
7. The Panchayat Raj bodies should be empowered to levy, collect and appropriate taxes and duties.
8. Establishment of a State Finance Commission for the allocation of finances to the Panchayats.
9. Establishment of a State Election Commission for the conduction of elections to the panchayats.

The above recommendations of the Gadgil Committee became the basis for drafting an amendment bill aimed at conferring the constitutional status and protection to the Panchayati Raj institutions.

Constitutionalisation

Rajiv Gandhi Government The Rajiv Gandhi Government introduced the 64th Constitutional Amendment Bill in the Lok Sabha in July 1989 to constitutionalise panchayati raj institutions and make them more powerful and broad based. Although, the Lok Sabha passed the bill in August 1989, it was not approved by the Rajya Sabha. The bill was vehemently opposed by the Opposition on the ground that it sought to strengthen centralisation in the federal system.

V.P. Singh Government The National Front Government, soon after assuming office in November 1989 under the Prime Ministership of V.P. Singh, announced that it would take steps to strengthen the panchayati raj institutions. In June 1990, a two-day conference of the state chief ministers under the chairmanship of V.P. Singh was held to discuss the issues relating to the strengthening of the panchayati raj bodies. The conference

approved the proposals for the introduction of a fresh constitutional amendment bill. Consequently, a constitutional amendment bill was introduced in the Lok Sabha in September 1990. However, the fall of the government resulted in the lapse of the bill.

Narasimha Rao Government The Congress Government under the prime ministership of P.V. Narasimha Rao once again considered the matter of the constitutionalisation of panchayati raj bodies. It drastically modified the proposals in this regard to delete the controversial aspects and introduced a constitutional amendment bill in the Lok Sabha in September, 1991. This bill finally emerged as the 73rd Constitutional Amendment Act, 1992 and came into force on 24 April, 1993[1].

73RD AMENDMENT ACT OF 1992

Significance of the Act

This act has added a new Part-IX to the Constitution of India. This part is entitled as 'The Panchayats' and consists of provisions from Articles 243 to 243-O. In addition, the act has also added a new Eleventh Schedule to the Constitution. This schedule contains 29 functional items of the panchayats. It deals with Article 243-G.

The act has given a practical shape to Article 40 of the Constitution which says that, "The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government." This article forms a part of the Directive Principles of State Policy.

The act gives a constitutional status to the panchayati raj institutions. It has brought them under the purview of the justiciable part of the Constitution. In other words, the state governments are under constitutional obligation to adopt the new panchayati raj system in accordance with the provisions of the act. Consequently, neither the formation of panchayats nor the holding of elections at regular intervals depend on the will of the state government any more.

The provisions of the act can be grouped into two categories—compulsory and voluntary. The compulsory (mandatory or obligatory) provisions of the act have to be included in the state laws creating the new panchayati raj system. The voluntary provisions, on the other hand, may be included at the discretion of the states. Thus the voluntary provisions of the act ensures the right of the states to take local factors like geographical, politico-administrative and others, into consideration while adopting the new panchayati raj system.

The act is a significant landmark in the evolution of grassroot democratic institutions in the country. It transfers the representative democracy into participatory democracy. It is a revolutionary concept to build democracy at the grassroot level in the country.

Salient Features

The salient features of the act are:

Gram Sabha The act provides for a Gram Sabha as the foundation of the panchayati raj system. It is a body consisting of persons registered in the electoral rolls of a village comprised within the area of Panchayat at the village level. Thus, it is a village assembly consisting of all the registered voters in the area of a panchayat. It may exercise such powers and perform such functions at the village level as the legislature of a state determines.

Three-Tier System The act provides for a three-tier system of panchayati raj in every state, that is, panchayats at the village, intermediate, and district levels[2]. Thus, the act brings

[1]This bill was passed by the Lok Sabha on 22 December, 1992, and by the Rajya Sabha on 23 December, 1992. Later, it was approved by the 17 state assemblies and received the assent of the President on 20 April, 1993.

[2]The Act defines all these terms in the following manner:

(a) Panchayat means an institution (by whatever name called) of self-government for rural areas.

about uniformity in the structure of panchayati raj throughout the country. However, a state having a population not exceeding 20 lakh may not constitute panchayats at the intermediate level.

Election of Members and Chairpersons All the members of panchayats at the village, intermediate and district levels shall be elected directly by the people. Further, the chairperson of panchayats at the intermediate and district levels shall be elected indirectly—by and from amongst the elected members thereof. However, the chairperson of a panchayat at the village level shall be elected in such manner as the state legislature determines.

The chairperson of a panchayat and other members of a panchayat elected directly or indirectly shall have the right to vote in the meetings of the panchayats.

Reservation of Seats The act provides for the reservation of seats for scheduled castes and scheduled tribes in every panchayat (i.e., at all the three levels) in proportion of their population to the total population in the panchayat area. Further, the state legislature shall provide for the reservation of offices of chairperson in the panchayat at the village or any other level for the SCs and STs.

The act provides for the reservation of not less than one-third of the total number of seats for women (including the number of seats reserved for women belonging the SCs and STs). Further, not less than one-third of the total number of offices of chairpersons in the panchayats at each level shall be reserved for women.

The act also authorises the legislature of a state to make any provision for reservation of seats in any panchayat or offices of chairperson in the panchayat at any level in favour of backward classes.

The reservation of seats as well as the reservation of offices of chairpersons in the panchayats for the scheduled castes and scheduled tribes shall cease to have effect after the expiration of the period specified in Article 334 (which is presently eighty years, that is, till 2030).

It must be noted here that the above provision relating to the reservation of seats in panchayats (both members and chairpersons) for the scheduled castes is not applicable to the state of Arunachal Pradesh. This is because the state is inhabited fully by indigenous tribal people and there are no scheduled castes. This provision was added later by the 83rd Constitutional Amendment Act of 2000.

Duration of Panchayats The act provides for a five-year term of office to the panchayat at every level from the date of it's first meeting. However, it can be dissolved before the completion of its term. Further, fresh elections to constitute a panchayat shall be completed (a) before the expiry of its duration of five years; or (b) in case of dissolution, before the expiry of a period of six months from the date of its dissolution.

But, where the remainder of the period (for which the dissolved panchayat would have continued) is less than six months, it shall not be necessary to hold any election for constituting the new panchayat for such period.

Moreover, a panchayat constituted upon the dissolution of a panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved panchayat would have continued had it not been so dissolved. In other words, a panchayat reconstituted after premature dissolution does not enjoy the full period of five years but remains in office only for the remainder of the period.

Disqualifications A person shall be disqualified for being chosen as or for being a member of panchayat if he/she is so disqualified, (a) under any law for the time being in force for

(b) Village means a village specified by the governor by public notification to be a village for this purpose, and includes a group of villages so specified.

(c) Intermediate level means a level between the village and district levels specified by the governor by public notification for this purpose.

(d) District means a district in a state.

the purpose of elections to the legislature of the state concerned, or (b) under any law made by the state legislature. However, no person shall be disqualified on the ground that he/she is less than 25 years of age if he/she has attained the age of 21 years. Further, all questions of disqualifications shall be referred to such authority as the state legislature determines.

State Election Commission The superintendence, direction and control of the preparation of electoral rolls and the conduct of all elections to the panchayats shall be vested in the state election commission. It consists of a state election commissioner to be appointed by the governor. His/her conditions of service and tenure of office shall also be determined by the governor. He/she shall not be removed from the office except in the manner and on the grounds prescribed for the removal of a judge of the state high court[3]. His/her conditions of service shall not be varied to his/her disadvantage after his/her appointment.

The state legislature may make provision with respect to all matters relating to elections to the panchayats.

Powers and Functions The state legislature may endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government. Such a scheme may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level with respect to (a) the preparation of plans for economic development and social justice and (b) the implementation of schemes for economic development and social justice as may be entrusted to them, including those in relation to the 29 matters listed in the Eleventh Schedule.

Finances The state legislature may (a) authorise a panchayat to levy, collect and appropriate taxes, duties, tolls and fees; (b) assign to a panchayat taxes, duties, tolls and fees levied and collected by the state government; (c) provide for making grants-in-aid to the panchayats from the consolidated fund of the state; and (d) provide for constitution of funds for crediting all moneys of the panchayats.

Finance Commission The governor of a state shall, after every five years, constitute a finance commission to review the financial position of the panchayats. It shall make the following recommendations to the Governor:

1. The principles that should govern:
   - (a) The distribution between the state and the panchayats of the net proceeds of the taxes, duties, tolls and fees levied by the state and allocation of shares amongst the panchayats at all levels.
   - (b) The determination of taxes, duties, tolls and fees that may be assigned to the panchayats.
   - (c) The grants-in-aid to the panchayats from the consolidated fund of the state.
2. The measures needed to improve the financial position of the panchayats.
3. Any other matter referred to it by the governor in the interests of sound finance of the panchayats.

The state legislature may provide for the composition of the commission, the required qualifications of its members and the manner of their selection.

The governor shall place the recommendations of the commission along with the action taken report before the state legislature.

The Central Finance Commission shall also suggest the measures needed to augment the consolidated fund of a state to supplement the resources of the panchayats in the states (on the basis of the recommendations made by the finance commission of the state).

Audit of Accounts The state legislature may make provisions with respect to the maintenance of accounts by the panchayats and the auditing of such accounts.

[3]A judge of a high court can be removed from his/her office by the President on the recommendation of the Parliament. This means that a state election commissioner cannot be removed by the governor, though appointed by him/her.

Application to Union Territories The provisions of this Part are applicable to the Union territories. But, the President may direct that they would apply to a Union territory subject to such exceptions and modifications as he/she may specify.

Exempted States and Areas The act does not apply to the states of Nagaland, Meghalaya and Mizoram and certain other areas. These areas include, (a) the scheduled areas and the tribal areas in the states[4]; (b) the hill areas of Manipur for which district councils exist; and (c) Darjeeling district of West Bengal for which Darjeeling Gorkha Hill Council exists.

However, the Parliament may extend the provisions of this Part to the scheduled areas and tribal areas subject to such exceptions and modifications as it may specify. Under this provision, the Parliament has enacted the "Provisions of the Panchayats (Extension to the Scheduled Areas) Act", 1996, popularly known as the PESA Act or the Extension Act.

Continuance of Existing Laws and Panchayats All the state laws relating to panchayats shall continue to be in force until the expiry of one year from the commencement of this act. In other words, the states have to adopt the new panchayati raj system based on this act within the maximum period of one year from 24 April, 1993, which was the date of the commencement of this act. However, all the panchayats existing immediately before the commencement of act shall continue till the expiry of their term, unless dissolved by the state legislature sooner.

Consequently, majority of states passed the panchayati raj acts in 1993 and 1994 to adopt the new system in accordance with the 73rd Constitutional Amendment Act of 1992.

[4]At present, ten states of India have scheduled areas. These are: Andhra Pradesh, Telangana, Jharkhand, Chhatisgarh, Gujarat, Himachal Pradesh, Madhya Pradesh, Maharashtra, Odisha and Rajasthan. Presently, there are a total of ten tribal areas (autonomous districts) in the four states of Assam (3), Meghalaya (3), Tripura (1) and Mizoram (3).

Bar to Interference by Courts in Electoral Matters The act bars the interference by courts in the electoral matters of panchayats. It declares that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies cannot be questioned in any court. It further lays down that no election to any panchayat is to be questioned except by an election petition presented to such authority and in such manner as provided by the state legislature.

Eleventh Schedule It contains the following 29 functional items placed within the purview of panchayats:

1. Agriculture, including agricultural extension
2. Land improvement, implementation of land reforms, land consolidation and soil conservation
3. Minor irrigation, water management and watershed development
4. Animal husbandry, dairying and poultry
5. Fisheries
6. Social forestry and farm forestry
7. Minor forest produce
8. Small-scale industries, including food processing industries
9. Khadi, village and cottage industries
10. Rural housing
11. Drinking water
12. Fuel and fodder
13. Roads, culverts, bridges, ferries, waterways and other means of communication
14. Rural electrification, including distribution of electricity
15. Non-conventional energy sources
16. Poverty alleviation programme
17. Education, including primary and secondary schools
18. Technical training and vocational education
19. Adult and non-formal education
20. Libraries
21. Cultural activities
22. Markets and fairs
23. Health and sanitation including hospitals, primary health centres and dispensaries

24. Family welfare
25. Women and child development
26. Social welfare, including welfare of the handicapped and mentally retarded
27. Welfare of the weaker sections, and in particular, of the scheduled castes and the scheduled tribes
28. Public distribution system
29. Maintenance of community assets.

COMPULSORY AND VOLUNTARY PROVISIONS

Now, we will identify separately the compulsory (obligatory or mandatory) and voluntary (discretionary or optional) provisions (features) of the 73rd Constitutional Amendment Act (1992) or the Part IX of the Constitution:

A. Compulsory Provisions

1. Organisation of Gram Sabha in a village or group of villages.
2. Establishment of panchayats at the village, intermediate and district levels.
3. Direct elections to all seats in panchayats at the village, intermediate and district levels.
4. Indirect elections to the post of chairperson of panchayats at the intermediate and district levels.
5. Voting rights of the chairperson and other members of a panchayat elected directly or indirectly.
6. 21 years to be the minimum age for contesting elections to panchayats.
7. Reservation of seats (both members and chairpersons) for SCs and STs in panchayats at all the three levels.
8. Reservation of one-third seats (both members and chairpersons) for women in panchayats at all the three levels.
9. Fixing tenure of five years for panchayats at all levels and holding fresh elections within six months in the event of supersession of any panchayat.
10. Establishment of a State Election Commission for conducting elections to the panchayats.
11. Constitution of a State Finance Commission after every five years to review the financial position of the panchayats.

B. Voluntary Provisions

1. Endowing the Gram Sabha with powers and functions at the village level.
2. Determining the manner of election of the chairperson of the village panchayat.
3. Giving representation to the chairpersons of the village panchayats in the intermediate panchayats or in the case of a state not having intermediate panchayats, in the district panchayats.
4. Giving representation to the chairpersons of the intermediate panchayats in the district panchayats.
5. Giving representation to members of the Parliament (both the Houses) and the state legislature (both the Houses) in the panchayats at different levels falling within their constituencies.
6. Providing reservation of seats (both members and chairpersons) for backward classes in panchayats at any level.
7. Granting powers and authority to the panchayats to enable them to function as institutions of self-government (in brief, making them autonomous bodies).
8. Devolution of powers and responsibilities upon panchayats to prepare plans for economic development and social justice; and to perform some or all of the 29 functions listed in the Eleventh Schedule of the Constitution.
9. Granting financial powers to the panchayats, that is, authorizing them to levy, collect and appropriate taxes, duties, tolls and fees.
10. Assigning to a panchayat the taxes, duties, tolls and fees levied and collected by the state government.
11. Making the grants-in-aid to the panchayats from the consolidated fund of the state.
12. Providing for constitution of funds for crediting all moneys of the panchayats.

PESA ACT OF 1996 (EXTENSION ACT)

The provisions of Part IX of the constitution relating to the Panchayats are not applicable to the Fifth Schedule areas. However, the Parliament may extend these provisions to such areas, subject to such exceptions and modifications as it may specify. Under this provision, the Parliament has enacted the "Provisions of the Panchayats (Extension to the Scheduled Areas) Act", 1996, popularly known as the PESA Act or the Extension Act.

At present, ten states have Fifth Schedule Areas. These are: Andhra Pradesh, Telangana, Chhatisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha and Rajasthan. All the ten states have enacted requisite compliance legislations by amending the respective Panchayati Raj Acts.

Objectives of the Act

The objectives of the PESA Act are as follows[5]:

1. To extend the provisions of Part IX of the Constitution relating to the panchayats to the scheduled areas with certain modifications
2. To provide self-rule for the bulk of the tribal population
3. To have village governance with participatory democracy and to make the gram sabha a nucleus of all activities
4. To evolve a suitable administrative framework consistent with traditional practices
5. To safeguard and to preserve the traditions and customs of tribal communities
6. To empower panchayats at the appropriate levels with specific powers conducive to tribal requirements
7. To prevent panchayats at the higher level from assuming the powers and authority of panchayats at the lower level of the gram sabha

[5]S.K. Singh, Panchayats in Scheduled Areas, Kurukshetra, May 2001, p. 26.

Features of the Act

The features (or the provisions) of the PESA Act are as follows:

1. A state legislation on the Panchayats in the Scheduled Areas shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources.
2. A village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs.
3. Every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level.
4. Every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution.
5. Every Gram Sabha shall—
   (i) approve of the plans, programmes and projects for social and economic development before they are taken up for implementation by the Panchayat at the village level; and
   (ii) be responsible for the identification of beneficiaries under the poverty alleviation and other programmes.
6. Every Panchayat at the village level shall be required to obtain from the Gram Sabha a certification of utilisation of funds for the above plans, programmes and projects.
7. The reservation of seats in the Scheduled Areas in every Panchayat shall be in proportion to the population of the communities for whom reservation is sought to be given under Part IX of the Constitution. However, the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats. Further, all seats of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes.

8. The state government may nominate such Scheduled Tribes which have no representation in the Panchayat at the intermediate level or the Panchayat at the district level. But such nomination shall not exceed one-tenth of the total members to be elected in that Panchayat.
9. The Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas. However, the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the state level.
10. Planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level.
11. The recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be mandatory for grant of prospecting licence or mining lease for minor minerals in the Scheduled Areas.
12. The prior recommendation of the Gram Sabha or the Panchayats at the appropriate level shall be mandatory for grant of concession for the exploitation of minor minerals by auction.
13. While endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with—
    (i) the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant
    (ii) the ownership of minor forest produce
    (iii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe
    (iv) the power to manage village markets
    (v) the power to exercise control over money lending to the Scheduled Tribes
    (vi) the power to exercise control over institutions and functionaries in all social sectors
    (vii) the power to control local plans and resources for such plans including tribal sub-plans
14. The State Legislations shall contain safeguards to ensure that Panchayats at the higher level do not assume the powers and authority of any Panchayat at the lower level or of the Gram Sabha.
15. The State Legislature shall endeavour to follow the pattern of the Sixth Schedule to the Constitution while designing the administrative arrangements in the Panchayats at district levels in the Scheduled Areas.
16. Any provision of any law (relating to Panchayats in the Scheduled Areas) which is inconsistent with the provisions of this Act shall cease to be in force at the expiry of one year from the date on which this Act receives the assent of the President[6]. However, all the Panchayats existing immediately before such date shall continue till the expiry of their term, unless dissolved by the State Legislature sooner.

FINANCES OF PANCHAYATI RAJ

The Second Administrative Reforms Commission of India (2005–2009) has summarized the sources of revenue of the Panchayati Raj Institutions (PRIs) and their financial problems in the following way[7]:

1. A major portion of Part IX of the Constitution deals with structural empowerment of the PRIs but the real

[6]This Act received the assent of the President on 24 December, 1996.

[7]Second Administrative Reforms Commission, Government of India, Report on Local Governance, 2007, pp. 151–154.

strength in terms of both autonomy and efficiency of these institutions is dependent on their financial position (including their capacity to generate own resources). In general, Panchayats in our country receive funds in the following ways:

(i) Grants from the Union Government based on the recommendations of the Central Finance Commission as per Article 280 of the Constitution.
(ii) Devolution from the State Government based on the recommendations of the State Finance Commission as per Article 243-I.
(iii) Loans / grants from the State Government.
(iv) Programme-specific allocation under Centrally Sponsored Schemes and Additional Central Assistance.
(v) Internal Resource Generation (tax and non-tax).

2. Across the country, States have not given adequate attention to fiscal empowerment of the Panchayats. The Panchayats own resources are meager. Kerala, Karnataka and Tamil Nadu are the states which are considered to be progressive in PRIs empowerment but even there, the Panchayats are heavily dependent on government grants. One can draw the following broad conclusions:
   (i) Internal resource generation at the Panchayat level is weak. This is partly due to a thin tax domain and partly due to Panchayats own reluctance in collecting revenue.
   (ii) Panchayats are heavily dependent on grants from Union and State Governments.
   (iii) A major portion of the grants both from Union as well as the State Governments is scheme specific. Panchayats have limited discretion and flexibility in incurring expenditure.
   (iv) In view of their own tight fiscal position, State Governments are not keen to devolve funds to Panchayats.
   (v) In most of the critical Eleventh Schedule matters like primary education, healthcare, water supply, sanitation and minor irrigation even now, it is the State Government which is directly responsible for implementation of these programmes and hence expenditure.
   (vi) Overall, a situation has been created where Panchayats have responsibility but grossly inadequate resources.
3. Though, in absolute terms, the quantum of funds the Union/State Government transfers to a Panchayat forms the major component of its receipt, the PRI's own resource generation is the soul behind its financial standing. It is not only a question of resources; it is the existence of a local taxation system which ensures people's involvement in the affairs of an elected body. It also makes the institution accountable to its citizens.
4. In terms of own resource collection, the Gram Panchayats are comparatively in a better position because they have a tax domain of their own, while the other two tiers are dependent only on tolls, fees and non-tax revenue for generating internal resources.
5. State Panchayati Raj Acts have given most of the taxation powers to Village Panchayats. The revenue domain of the intermediate and District Panchayats (both tax as well as non-tax) has been kept much smaller and remains confined to secondary areas like ferry services, markets, water and conservancy services, registration of vehicles, cess on stamp duty and a few others.
6. A study of various State Legislations indicates that a number of taxes, duties, tolls and fees come under the jurisdiction of the Village Panchayats. These interalia include property/house tax, profession tax, land tax/cess, taxes/tolls on vehicles, entertainment tax/fees, license fees, tax on non-agriculture land, fee on registration of cattle, sanitation/

drainage/conservancy tax, water rate/tax, lighting rate/tax, education cess and tax on fairs and festivals.

REASONS FOR INEFFECTIVE PERFORMANCE

Even after conferring the constitutional status and protection through the 73rd Amendment Act (1992), the performance of the Panchayati Raj Institutions (PRIs) has not been satisfactory and not upto the expected level. The various reasons for this sub-optimal performance are as follows[8]:

1. **Lack of adequate devolution:** Many States have not taken adequate steps to devolve 3Fs (i.e., functions, funds and functionaries) to the PRIs to enable them to discharge their constitutionally stipulated function. Further, it is imperative that the PRIs have resources to match the responsibilities entrusted to them. While SFCs (state finance commissions) have submitted their recommendations, not many few States have implemented these or taken steps to ensure the fiscal viability of the PRIs.
2. **Excessive control by bureaucracy:** In some States, the Gram Panchayats have been placed in a position of subordination. Hence, the Gram Panchayat Sarpanches have to spend extraordinary amount of time visiting Block Offices for funds and/or technical approval. These interactions with the Block staff office distort the role of Sarpanches as elected representatives.
3. **Tied nature of funds:** This has two implications. The activities stated under a certain scheme are not always appropriate for all parts of the district. This results in unsuitable activities being promoted or an under-spend of the funds.
4. **Overwhelming dependency on government funding:** A review of money received and own source funds shows the overwhelming dependence of Panchayats on government funding. When Panchayats do not raise resources and instead receive funds from outside, people are less likely to request a social audit.
5. **Reluctance to use fiscal powers:** An important power devolved to GP (Gram Panchayat) is the right to levy tax on property, business, markets, fairs and also for services provided, like street lighting or public toilets, etc. Very few Panchayats use their fiscal power to levy and collect taxes. The argument pushed by Panchayat heads is that it is difficult to levy tax on your own constituency, especially when you live in the community.
6. **Status of the Gram Sabha:** Empowering the Gram Sabhas could have been a powerful weapon for transparency, accountability and for involvement of the marginalized sections. However, a number of the State Acts have not spelt the powers of Gram Sabhas nor have any procedures been laid down for the functioning of these bodies or penalties for the officials.
7. **Creation of Parallel Bodies:** Often, Parallel Bodies (PBs) are created for supposedly speedy implementation and greater accountability. However, there is little evidence to show that such PBs have avoided the evils including that of partisan politics, sharing of spoils, corruption and elite capture. Missions (in particular) often bypassing mainstream programmes, create disconnect, duality, and alienation between the existing and the new structures and functions. PBs usurp the legitimate space of PRIs and demoralize the PRIs by virtue of their superior resource endowments.
8. **Poor Infrastructure:** A number of Gram Panchayats in the country do not have even full time Secretary and also basic

[8]Ministry of Panchayati Raj, Government of India, Roadmap for the Panchayati Raj (2011-16), pp. 11–12, 23 and 7–8.

office buildings. The database for planning, monitoring etc., are lacking in most of the cases.

A large number of elected representatives of PRIs are semi-literate or illiterate and know little about their roles & responsibilities, programmes, procedures, systems. Often for want of good, relevant and periodic training, they are not able to perform their functions properly.

Table 39.2 Articles Related to Panchayats at a Glance

Article No.	Subject-matter
243.	Definitions
243A.	Gram Sabha
243B.	Constitution of panchayats
243C.	Composition of panchayats
243D.	Reservation of seats
243E.	Duration of panchayats, and so on
243F.	Disqualifications for membership
243G.	Powers, authority and responsibilities of panchayats
243H.	Powers to impose taxes by, and funds of, the panchayats
243-I.	Constitution of finance commission to review financial position
243J.	Audit of accounts of panchayats
243K.	Elections to the panchayats
243L.	Application to union territories
243M.	Part not to apply to certain areas
243N.	Continuance of existing laws and panchayats
243-O.	Bar to interference by courts in electoral matters

Table 39.3 Committees Related to Panchayati Raj (After Constitutionalisation)

Sl. No.	Name of the Committee	Chairman	Appointed in	Reported in
1.	Task Force on Devolution of Powers and Functions to Panchayati Raj Institutions	Lalit Mathur	2001	2001
2.	Expert Group on Planning at the Grassroots Level	V. Ramachandran	2005	2006
3.	Task Force for Preparation of a Manual for District Planning	Smt. Rajwant Sandhu	2008	2008
4.	Committee on Restructuring of DRDA (District Rural Development Agency)	V. Ramachandran	2010	2012
5.	Expert Committee on Leveraging Panchayats for Efficient Delivery of Public Goods and Services	Mani Shankar Aiyar	2012	2013